Manufactured Housing Association for Regulatory Reform

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March 15, 2016

VIA FEDERAL EXPRESS AND ELECTRONIC SUBMISSION

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

Re: Enterprise Duty to Serve Underserved Markets

Dear Mr. Pollard:

The following comments are submitted on behalf of the Manufactured Housing Association for Regulatory Reform (MHARR). MHARR is a national trade association representing the views and interests of producers of manufactured housing regulated by the U.S. Department of Housing and Urban Development (HUD) pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401, et seq.) as amended by the Manufactured Housing Improvement Act of 2000 (2000 reform law). MHARR was founded in 1985. Its members include independent manufactured housing producers from all regions of the United States.

I. INTRODUCTION AND PROCEDURAL HISTORY

On December 18, 2015, the Federal Housing Finance Agency (FHFA) published a proposed rule in the Federal Register to implement the "Duty to Serve Underserved Markets" (DTS) provision of the Housing and Economic Recovery Act of 2008 (HERA) (see, 80 Federal Register, No. 243 at p. 79182, et seq.) (2015 NPRM). This follows the publication of a proposed DTS implementation rule by FHFA on June 7, 2010 (see, 75 Federal Register, No. 108 at p. 32099) (2010 NPRM) and an Advance Notice of Proposed Rulemaking by FHFA published on August 4, 2009 (see, 74 Federal Register, No. 148 at p. 38572) (2009 ANPR). MHARR's July 1, 2010 written comments regarding the 2010 Duty to Serve NPRM are hereby incorporated by reference

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

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

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

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

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

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

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

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

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

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

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

[3] See, Attachment 1, hereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. BACKGROUND

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

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

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

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

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

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

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

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[6] See, U.S. Department of Housing and Urban Development, "Is Manufactured Housing a Good Alternative for Low-Income Families? Evidence from the American Housing Survey" (December 2004).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. COMMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[21] See, 75 Federal Register, No. 108, at 32103.
[22] See, Attachment 2, supra.

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

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

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

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

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

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

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

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

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

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

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

(b) Inconsistency in Quality and Standardization of Loan Documentation

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

(c) Higher Default Rates and Loss Severities

Like points (a) and (b) above, this observation stems from Fannie Mae's limited experience with loans originated by Greentree, and should not simply be assumed by FHFA – as is the case here – to be either typical or representative of the performance of manufactured home chattel loans originated and held in portfolio by existing lenders (or future lenders). Indeed, public information regarding the performance of manufactured housing loans currently held in portfolio by the nation's two dominant manufactured housing lenders, indicates a foreclosure/repossession rate of 2.64%, a difference of less than 1% from the 1.77% foreclosure rate reported for the broader housing market at the end of the third quarter of 2015[29] -- for large numbers of borrowers with incomes significantly higher than most manufactured home purchasers. Moreover, the same lenders reported 8,444 foreclosures/repossessions in 2015, at an average loss of $18,593 per home[30], or a loss severity of 28.47%, based on a 2014 average sales price of $65,300 for all types

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

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

[29] See, note 27, supra.

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

of manufactured homes.[31] By contrast, Freddie Mac reported historical loss severities averaging 30.73% across all FICO scores and Loan-To-Value (LTV) ratios between 1999 and 2013.[32]

(d) Higher Chattel Interest Rates

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

Manufactured housing lenders have repeatedly explained in public testimony before Congress, that higher interest rates on manufactured housing loans (and particularly chattel loans) are unavoidable in the absence of any meaningful Enterprise secondary market support or securitization. Thus, in November 2011 testimony before a House of Representatives subcommittee, the President of Clayton Homes, Inc. stated, in relevant part: "... the lack of a secondary market means lenders are typically forced to hold manufactured home loans in their portfolios, which makes [the] cost of capital associated with originating manufactured home loans higher for these lenders versus those which are able to securitize real property mortgages through the GSEs...."[34] To now deny manufactured home chattel loans that type of going secondary market and securitization support based on the comparatively higher-cost interest for such loans would not only be a self-fulfilling prophecy and a de facto FHFA rejection of policy decisions made by Congress, but would be fundamentally disingenuous as well.

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

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

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

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

[34] See, Testimony of Mr. Kevin Clayton before the Subcommittee on Housing, Insurance and Community Opportunity, Committee on Financial Services, U.S. House of Representatives Field Hearing on [the] "State of the U.S. Manufactured Housing Industry," November 29, 2011.

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

(e) Chattel Non-Inclusion in Federal Consumer Programs

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

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

(f) Greater Risk to Investors from Bankrupt Borrowers

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

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

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

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

For years prior to the failure of the Enterprises, manufactured housing obligations constituted a miniscule portion of the Enterprises' total business. The performance of manufactured housing loans -- at less than one percent of the Enterprises' portfolios -- was not responsible for the Enterprises' failure, was not a significant factor in their failure and, because of the relatively small size of the manufactured housing market as compared with other segments of the housing industry, would not impair the successful rehabilitation of the Enterprises (or the future transfer of their functions) even if the Enterprises purchased or guaranteed every manufactured home loan for the indefinite future.

The failure of the Enterprises, manifestly, was a consequence of their massive participation in the extremely risky and exponentially larger sub-prime finance market for site-built homes and other risky real estate mortgage products, including adjustable-rate mortgages, low or no-down-payment loans and interest-only loans, among others. For the Enterprises, which built their business around that market for years, ignoring its inherent risks and providing market support for well-heeled borrowers, while deriving tax and other government benefits for supposedly serving low, lower and moderate-income borrowers, to now claim (or for FHFA to claim) that they would somehow be harmed by the performance of a comparatively small number of lower-cost manufactured housing chattel loans, is disingenuous and destructive of the true function and mission of the Enterprises.

Put differently, for the Enterprises, that spent years putting people into homes they could not afford -- leading to their own collapse -- to now balk at helping people buy manufactured homes that they can afford, based on alleged "risk," is absurd, unacceptable and inexcusable. Manufactured home loans -- of all types -- which pair purchasers with modern (i.e., post-2000 reform law) manufactured homes that they can afford, rather than employing gimmicks to paper over insufficient resources, when managed properly, are no more risky than any other home loan and are far less risky than the loans which landed the Enterprises in conservatorship. As the "Application of the Duty to Serve Underserved Markets" White Paper included with MHARR's 2010 NPRM comments emphasizes, these products, including real estate, land-home and chattel transactions, represent "successful lending models that [have] served the industry well and produced profitability for the lenders." Consequently, if serving the manufactured housing market as Congress intended requires the Enterprises to develop new "operational capacities" and "risk management processes not currently in place," then those capacities should be developed and put in place, instead of emasculating DTS.

Indeed, the continuing overt hostility of FHFA and the Enterprises toward manufactured home chattel loans – and the lower to moderate-income home buyers who rely on those loans in particular – stands in sharp contrast with FHFA's rush in late-2014 to significantly relax underwriting standards for Enterprise-supported loans in the site-built sector. As part of those revised standards, first-time home owners became eligible for Enterprise-supported home loans with down-payments as low as 3% and FICO scores as low as 620 (at Fannie Mae).[36] Thus, while the Enterprises (encouraged and authorized by FHFA) have lost no time in reverting to the type of risky practices that led to their insolvency and conservatorship in the first place – for the benefit of wealthier, credit-laden purchasers of much more costly site-built homes (with an average sales price of $345,800 in 2014),[37] FHFA still refuses to allow the Enterprises to provide DTS support for 80% of new manufactured home buyers taking out much smaller loans on homes that they can actually afford; who have a much greater need for Enterprise secondary market and securitization support; and who, as a result, will either be excluded from home ownership altogether, or are (and will be) forced to pay unnecessarily high interest rates for access to any type of financing.

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

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

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

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

[37] See, attachment 2, supra.

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

[39] Id. at p. 79190.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thus, in 2011 testimony before a House subcommittee, the President of Clayton Homes stated: "... the lack of a secondary market means lenders are typically forced to hold manufactured home loans in their portfolios, which makes [the] cost of capital associated with originating manufactured home loans higher for these lenders versus those which are able to securitize real property mortgages through the GSEs...."[46] Similarly, a 2011 MHI Issue Brief states: "... since our cost of capital is higher, manufactured home loan interest rates are typically higher. Since Fannie Mae and Freddie Mac do not purchase loans or create a secondary market where manufactured housing lenders can access capital at a discounted rate, lenders need to rely on other sources to make loans. These sources charge a higher interest."

The full implementation of DTS, however, including full chattel loan participation, would *directly* address the problem underlying such higher-cost loans by: (1) establishing a high-volume secondary market and GSE support for all manufactured home consumer loans that would help ease the pressures and risks that translate into higher interest rates and constrained credit availability; and (2) by alleviating those risks, which have largely limited today's manufactured housing finance market to a small number of deep-pocket portfolio lenders (offering higher-cost products), help encourage more lenders to enter (or re-enter) the manufactured housing market and

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[44] Id. at p. 76.

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

[46] See, note 34, supra.

thereby expand competition, further reducing market pressures driving higher interest rates – to the significant benefit of lower and moderate-income home buyers.

And, in fact, nexus between the full implementation of a robust DTS-based secondary market for all manufactured home loans, including chattel loans, and expanded competition within the manufactured home consumer lending market (with corresponding downward pressure on interest rates), has been acknowledged by the corporate parent of both Vanderbilt and 21st. Thus, in 2012 congressional testimony, the General Counsel of Clayton Homes acknowledged that: "... [T]he lack of a secondary market means that lenders that want to participate in the manufactured housing market must hold these loans in their portfolios.... [S]ince only lenders that have the financial ability to hold the loans they originate on their balance sheets can participate in a meaningful way, this either eliminates or severely limits the ability of smaller lenders to enter the manufactured housing market."[47]

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

Because the full implementation of DTS, including full manufactured housing chattel loan participation on a going basis would itself result in lower levels of risk for lenders, it would, by its very existence, exert downward pressure on manufactured housing loan interest rates. Further, it would be highly likely to draw more – and more diverse -- lenders into the manufactured housing market, leading to enhanced competition and yet additional downward pressure on interest rates for such loans. By eliminating a substantial part of the rationale and justification for current high-cost manufactured housing loan interest rates charged by the dominant lenders, and by weakening or eliminating their dominant role in the market by engendering enhanced competition, the full implementation of DTS – including chattel loans – is arguably contrary to the direct financial interests of those lenders.

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

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[47] See, Testimony of Mr. Tom Hodges before the Subcommittee on Financial Institutions and Consumer Credit Committee on Financial Services U.S. House of Representatives Hearing on The Impact Dodd-Frank's Home Mortgage Reforms: Consumer and Market Perspectives, July 11, 2012, at p. 6.

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

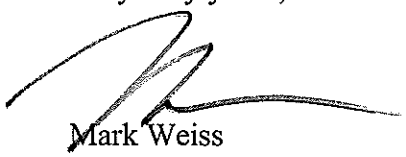
either their content or their specific impact, all to the extreme and irreparable detriment of other affected stakeholders.

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

IV. CONCLUSION

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

Very truly yours,



Mark Weiss
President & CEO

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

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

ATTACHMENT 1

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

Mike:

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

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

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

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

Thank you again for our conversation yesterday.

Mark Weiss
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ATTACHMENT 2

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

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

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

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