Preserving the American Dream of Home Ownership Through Regulatory Reform

MHARR NEWS

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FHFA FINAL DUTY TO SERVE RULE CONTINUES TO FAIL CHATTEL BORROWERS

Washington, D.C., December 14, 2016 – To great fanfare, the Federal Housing Finance Agency (FHFA) on December 13, 2016 announced -- after eight years of on-and-off rulemaking activity – the release of its final rule to implement the "Duty to Serve Underserved Markets" (DTS) provision of the Housing and Economic Recovery Act of 2008 (HERA). Unfortunately, if the portions of this final rule addressing manufactured housing personal property (i.e. chattel) loans – which have been the continual focus of MHARR since the inception of the DTS rulemaking in 2010 -- are any indication, the industry's post-production sector may wish to carefully analyze all aspects of the final rule, which will continue to devastate the 80% of lower and moderate-income consumers who rely on chattel financing to purchase affordable manufactured homes.

While the 241-page final rule (released to stakeholders by FHFA pending formal publication in the Federal Register) (see, copy attached), on its face, would nominally permit one or both of the Government Sponsored Enterprises (GSEs) to obtain DTS credit for manufactured housing chattel loans, it does so under a veritable mountain of conditions, qualifications and limitations that are so restrictive, it is highly doubtful that the lower and moderate-income American consumers who rely on these loans will ever see any meaningful relief. This will leave a significant majority of manufactured home purchasers -- as they are now -- a captive market for the higher-cost loans offered by the finance affiliates of industry's largest corporate conglomerates. The final DTS rule, accordingly – as is explained briefly below -- offers far less than meets the eye, and should now be addressed and rectified by Congress.

The restrictions and limitations imposed on any potential inclusion of a manufactured housing chattel loan element in an "Underserved Markets Plan" submitted for FHFA approval by one or both of the GSEs under the final rule make it highly unlikely that any such loans – and any such consumers – will be served by the GSEs, either at all or in the foreseeable future. First, the rule does "not make any specific activity mandatory." As a result, there is nothing in the "Duty to Serve" rule that would make serving consumers of manufactured housing chattel loans a "duty" of the GSEs. Quite the contrary, any service provided for manufactured home chattel loans under DTS would be completely discretionary on the part of the GSEs – and the GSEs have long opposed the inclusion of chattel loans in DTS.

Thus, while the final rule lists "support[ing] manufactured homes titled as personal property" as a permissible "regulatory activity" (although, in fact, it is a permissible statutory activity), chattel is only one of four permissible "regulatory activities" for manufactured housing

and, under the final rule, the GSEs would not necessarily even be required to "consider" that activity for inclusion in their Underserved Markets Plans. And this, as FHFA acknowledges in the final rule, is a change from the December 18, 2015 proposed rule, which "would have required the Enterprises to consider ... every statutory and regulatory activity specified in the rule." Essentially then, the final rule represents a "bait-and-switch" scenario. It lists chattel loan support as a permitted activity, but then specifically enables the GSEs to avoid that activity entirely if they wish.

Unfortunately, though, this emasculation of the "duty" to serve is just the beginning, as the final rule would, among other things:

1. Permit GSE support for manufactured housing chattel loans on only a "pilot program" basis, meaning that chattel loans would not be supported on a "going basis" and that the extent of GSE support for such loans – if any – could be severely restricted in scope and number;
2. Manufactured housing chattel loan "pilot programs" could only begin after a "methodical assessment" by the GSEs of "ways to mitigate ... challenges and risks" posed by such loans "before beginning any chattel loans purchases;"
3. No such pilot program could begin until after a "thorough review and assessment of such mitigation methodologies" by FHFA;
4. Any such pilot program would require approval by FHFA "under the new product and activities statute (12 U.S.C. 4541) prior to any purchases by the [GSEs] of chattel loans;"
5. To qualify for FHFA approval, any GSE chattel loan pilot program would be "required" to incorporate "borrower and tenant protections beyond those required under current law;" and perhaps most disconcertingly, the final rule
6. Appears to urge the GSEs, in proposing any such "pilot program," to follow the lead of the Federal Housing Administration (FHA) and its Title I manufactured housing chattel loan insurance program in "charging appropriate loan level price adjustments and guarantee fees as possible conditions for chattel initiatives by the Enterprises." At present, the FHA Title I program is producing negligible manufactured housing chattel loan originations because of its restrictive 10-10 criteria, which have limited eligibility and participation to just two lenders affiliated with the industry's largest corporate conglomerate.

And these are just some of the limitations and restrictions that would be placed on any possible "pilot program" involving manufactured home chattel loans. As the final rule clearly states, additional conditions, criteria and restrictions are entirely possible upon the review of any such program by FHFA either before or after it commences operation.

While the manufactured housing industry has suffered greatly as a result of financing discrimination by the GSEs – which DTS was designed and intended to end – the worst harm from these practices has befallen the lower and moderate-income American families who have long-depended on manufactured housing as a premier source of non-subsidized, affordable home-ownership. And it is, unfortunately, these Americans who will be the most harmed by FHFA's failure to mandate – now – the Duty to Serve as an actual duty, rather than an option at the

discretion of entities that have shown no interest in serving those consumers. This, despite the GSEs statutory mission to support home-ownership opportunities for credit-worthy lower and moderate-income Americans. The final DTS rule leaves these consumers with little or no alternative – either now or indefinitely into the future -- to the higher-cost offerings of lenders that take advantage of the lack of GSE-support parity for the vast majority of manufactured home consumer loans that are originated on a chattel basis.

Consequently, it will now be up to Congress to address this matter with an appropriate remedy to mandate proper GSE support for manufactured home chattel loans within a short and finite time-certain.

The Manufactured Housing Association for Regulatory Reform is a Washington, D.C.-based national trade association representing the views and interests of independent producers of federally-regulated manufactured housing.