Manufactured Housing Association for Regulatory Reform

1331 Pennsylvania Avenue, NW • Suite 512 • Washington, DC 20004 • 202-783-4087 • Fax 202-783-4075 • mharrdg@aol.com

THE FHFA DUTY TO SERVE FINAL RULE IS UNACCEPTABLE AS IT SHOULD INCLUDE A DEFINITIVE CHATTEL LOAN SECURITIZATION PROGRAM

Congress, to remedy the historical failure of the Government Sponsored Enterprises (Enterprises) to provide meaningful secondary market and securitization support for purchasers of federally-regulated manufactured housing, directed the GSEs (and the Federal Housing Finance Agency – FHFA – as their federal regulator), via the Duty to Serve Underserved Markets (DTS) provision of the Housing and Economic Recovery Act of 2008 (HERA) to "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." Congress, in addition, prior to the final passage of HERA, included language leaving no doubt that DTS embraced both manufactured housing real estate and personal property (chattel) loans. (MHARR March 15, 2016 written comments on proposed FHFA DTS implementation rule – MHARR Comments – at p. 10.) *

Both the express language and remedial nature of DTS (and HERA) make it unmistakable that the "duty" which it establishes is statutory in nature and mandatory for the Enterprises and FHFA. As a result, the fundamental character and directive of DTS cannot be altered or diminished via administrative, regulatory, or other activity by either the Enterprises or FHFA.

Based on the scope and nature of the mandatory statutory "duty" established by Congress via DTS, the final DTS implementation rule developed and promulgated by FHFA -- by failing to ensure Enterprise secondary market and securitization support for manufactured housing chattel loans – is insufficient, patently inadequate to serve the historically underserved (or unserved) needs of very low, low and moderate-income consumers of affordable manufactured housing, and is, therefore, unacceptable.

This unacceptable failure – particularly during an extended affordable housing crisis and nine years after congressional passage of HERA -- encompasses two elements that must both be resolved in order to arrive at an ultimate DTS implementation rule that would satisfy the express mandate and manifest intent of Congress. These elements are: (1) the failure of the current final DTS rule to provide for the mandatory securitization and secondary market support of manufactured home chattel loans by the Enterprises on a scale and within an expedited timeframe sufficient to meaningfully impact and expand the manufactured housing finance market for the benefit of statutorily-defined consumers, pursuant to a specific defined structure and performance metrics; and (2) the failure of the current final rule to provide a mandatory and meaningful enforcement mechanism for any failure by the Enterprises to comply with the "duty" established under element 1, above.

Manufactured housing consumer chattel loans, in accordance with data maintained by the U.S. Census Bureau, comprise the vast bulk of all purchase loans for federally-regulated manufactured homes – i.e., 80%. The percentage of chattel placements, moreover, is growing and has grown significantly – by 25% -- since the most recent Census Bureau measuring period began in 2007 (MHARR Comments, Attachment 2.) * Given the fact that manufactured home chattel loans, moreover, typically cover only the cost of the home itself (instead of a combination of the home and real estate upon which the home is sited), they offer DTS-beneficiary consumers the most affordable financing access to the nation's most affordable homes, based again on Census Bureau data (MHARR Comments at p. 11.) *

The current final DTS implementation rule, by failing to provide for mandatory and enforceable Enterprise secondary market and securitization support for manufactured housing chattel loans, thereby abandoning and leaving unserved 80% (or more) of the manufactured housing market – and any Enterprise Underserved Markets Plan (Plan) that fails to include mandatory, meaningful and expedited support for such loans – does not and patently cannot satisfy the "duty" to serve as prescribed by Congress.

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This failure, by FHFA and the Enterprises, which historically have never shown any interest in providing secondary market or securitization support for manufactured housing and particularly the huge market segment financed through chattel loans – thereby prompting the mandatory "duty" to serve – and do not understand, comprehend, or grasp either manufactured housing or the manufactured housing finance market, would allow and continue to facilitate the entrenched Enterprise discrimination that continues to fundamentally distort the manufactured housing finance market. Moreover, the Enterprises' refusal to acknowledge the significant impact of the landmark Manufactured Housing Improvement Act of 2000 in strengthening consumer protection and satisfaction, also improperly sustains a negative perspective regarding the proven role and viability of chattel loans in today's manufactured housing finance market.

Enterprise discrimination against manufactured housing – contrary to the full parity legislated by Congress in the Manufactured Housing Improvement Act of 2000 -- leaves the manufactured housing finance market and manufactured housing consumers without the benefit of full competition. This effectively forces consumers into higher-rate loans than would otherwise characterize a fully competitive finance market. While higher-rate manufactured home chattel loans (on the order of 9-10% for an average term of 7-18 years) can be and sometimes are necessary in order to serve higher-risk borrowers, they have – due to the absence of Enterprise secondary market and securitization support – gradually become the norm within the manufactured housing financing market, a condition that artificially restricts access to and the availability of affordable manufactured housing, needlessly excludes millions of Americans from the benefits of home ownership and, under the current FHFA DTS rule, will only grow worse.

A permissive DTS manufactured housing chattel "pilot program" as outlined by FHFA in its final rule and as further elucidated in its Duty to Serve Evaluation Guidance -- 2018-2020 Plan Cycle (Evaluation Guidance) is not the answer for American consumers in need of affordable housing opportunities now and, as structured, cannot and will not become the basis for a manufactured housing chattel program that would fully comply with DTS. Consumers have already waited nine years since the enactment of DTS and cannot afford to wait years longer for results based on trial and error with a limited number of loans under such a "pilot program."

A manufactured housing chattel loan "pilot program" of the type authorized by the DTS final rule and Evaluation Guidance will not solve the fundamental deficiencies that DTS was designed to remedy and is a prescription for ultimate failure because: (1) it would inevitably be too small, too limited, too restrictive (and too late) to serve a meaningful segment of the consumers that DTS was designed and intended to benefit; and (2) it would inevitably be too small, too limited, too restrictive (and too late) to properly measure or gauge success in a market comprised of millions of Americans. It is a known fact that Washington, D.C. is historically and traditionally the graveyard of "pilot" and "demonstration" projects – with the result that good laws are either stalled, circumvented or ultimately undermined. Such programs only work when the parameters and scope of a project are fully-established in law by Congress– which is not the case in this instance.

Consequently, based on all of these fatal deficiencies, the current FHFA final DTS implementation rule should be withdrawn and recalled for fundamental reform by FHFA. In place of a limited, voluntary "pilot" DTS chattel program, a revised and reformed DTS implementation rule should specifically authorize and mandate a series of Enterprise-securitized chattel loans in volume (i.e., thousands), staggered over multi-year periods, so that they can be analyzed and evaluated every three years for any adjustment as warranted for the next series. Given the high demand by very low, low and moderate-income consumers for such Enterprise-securitized loans -- and the estimated 250,000 empty spaces in existing manufactured home communities – this type of program would not only meet the full DTS obligations of the Enterprises, but would make affordable homeownership immediately available to millions of Americans.

Absent such a robust program that would be fully compliant with both the letter and intent of DTS, the current FHFA DTS final implementation rule will only create more confusion and delay to the detriment of homebuyers, and force the return of DTS stakeholders to Congress for necessary corrections.

*MHARR'S DTS COMMENTS CAN BE VIEWED AT:
https://www.fhfa.gov/SupervisionRegulation/RegulationFederalRegister/Pages/Rules-Notices.aspx