Manufactured Housing Association for Regulatory Reform

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VIA FEDERAL EXPRESS

Hon. Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
Eighth Floor
400 Seventh Street, S.W.
Washington, D.C. 20219

Re: Enterprise Regulatory Capital Framework – RIN 2590-AA95

Dear Mr. Pollard:

The following comments are submitted on behalf of the Manufactured Housing Association for Regulatory Reform (MHARR). MHARR is a Washington, D.C.-based national trade association representing the views and interests of producers of manufactured housing subject to federal regulation 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. MHARR's members are primarily smaller businesses, located in all regions of the United States.

Twelve years ago, Congress, pursuant to the remedial "Duty to Serve Underserved Markets" (DTS) mandate incorporated within the Housing and Economic Recovery Act of 2008 (HERA), directed the two Government Sponsored Enterprises (GSEs or Enterprises) – Fannie Mae and Freddie Mac – and the Federal Housing Finance Agency (FHFA), as the GSEs' federal regulator, to specifically serve, in a market significant manner, three historically "underserved" housing markets, including the market for mainstream, affordable, federally-regulated manufactured housing.

As described by MHARR in previous comments submitted to FHFA, "the DTS mandate represents both a congressional finding that the two Government Sponsored 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)) (emphasis added).[1]

As has been thoroughly documented by MHARR, however, DTS, more than a decade after its enactment, remains an unfulfilled promise for the overwhelming majority of the mainstream HUD Code manufactured housing market and the millions of lower and moderate-income American families who rely upon manufactured homes as the nation's leading source of inherently affordable, non-subsidized homeownership.[2] Thus, today, the nearly 80 percent of the HUD Code consumer market financed through personal property (i.e., "chattel") loans, remains completely unserved under DTS, and the manufactured housing real estate market, which comprises a much smaller (and more costly) segment of the overall HUD Code market, has fared little better.

Accordingly, based on FHFA's own DTS statistics,[3] it appears that only 7 percent – or less – of the existing HUD Code consumer market is being served today under DTS after 12 years of evasion and outright defiance of the congressional DTS mandate by Fannie and Freddie, including a disingenuous effort to shift and divert DTS away from mainstream affordable manufactured housing and mainstream manufactured housing consumers, through the so-called "MH Advantage" and "Choice Home" programs for much more costly, "hybrid" factory-built homes with prices that are double and triple those of mainstream, affordable HUD Code homes.[4] Conversely, some 93 percent of the manufactured housing market – and manufactured housing consumers – remain unserved by the GSEs, notwithstanding Congress' DTS directive. This blatant failure to implement DTS and establish a fully-competitive secondary market for mainstream manufactured housing consumer loans under DTS, leaves manufactured housing purchasers at the mercy of a relative handful of "portfolio" lenders affiliated with the manufactured housing industry's largest corporate conglomerates -- including Berkshire Hathaway, Inc. subsidiary, Clayton Homes, Inc. -- which charge consumers disproportionately higher interest rates. Thus as confirmed by Freddie Mac's own research, in the absence of GSE support for the manufactured housing consumer lending market pursuant to DTS, "more than 90% of the [manufactured home] personal property loans reported in … 2018" were "higher-cost originations."[5]

Now, following the GSEs' long-term (and continuing) failure to implement DTS for HUD Code manufactured housing on anything even approaching a market-significant – or even market-adequate – basis, FHFA, through the rule proposed in the instant docket, is seeking to establish a new regulatory capital framework for the Enterprises. As described by FHFA, the current proposed rule is designed to "establish a post-conservatorship regulatory capital framework that ensures that

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[1] See, MHARR Comments to FHFA, "Enterprise Duty to Serve Underserved Markets," RIN 2590-AA27, March 15, 2016.

[2] See, e.g., MHARR comments to FHFA "Proposed Modifications: 2018-2020 Duty to Serve Plans," November 12, 2019, attached hereto as Attachment 1.

[3] See, FHFA DTS "Dashboard."

[4] See, MHARR correspondence to FHFA Deputy Director, Sandra Thompson, "Correcting the GSEs' Noncompliance with the Duty to Serve Mandate for Manufactured Housing," August 18, 2020, attached hereto as Attachment 2.

[5] See, "Manufactured Home Loan Performance – 2009-2019," Freddie Mac (2020) at p. 7.

each Enterprise operates in a safe and sound manner and is positioned to fulfill its statutory mission to provide stability and ongoing assistance to the secondary mortgage market across the economic cycle [and] particularl[y] during periods of financial stress."[6]

While the proposed Enterprise Regulatory Capital Framework rule, in its current form as published by FHFA, does not specifically reference or take cognizance of the statutory DTS mandate, any final rule adopted through this proceeding should not – and must not – be structured or phrased in such a way as to subvert or impinge upon any aspect of either the DTS mandate or the Enterprises' ability and obligation to fully and effectively comply with that affirmative statutory directive.[7] Accordingly, any final rule published in this docket by FHFA should:

(1) Take specific cognizance of the existence of the DTS statutory mandate;

(2) Take specific cognizance of the binding and mandatory nature of the DTS directive with respect to each and every DTS-identified market;

(3) Affirmatively provide that the GSEs' responsibilities and obligations pursuant to DTS are not, will not and must not be altered or affected by the Regulatory Capital Framework;

(4) Affirmatively provide that, if necessary, full DTS compliance to provide market-significant support for each enumerated DTS market, including mainstream HUD Code manufactured housing, constitutes a statutory exception to -- or "carve-out" from -- the remainder of the Enterprise Regulatory Capital Framework as proposed; and

(5) Insofar as it has been proven that the alleged "implementation" of the DTS manufactured housing mandate has primarily benefited the industry's largest corporate conglomerates, any final rule in this docket should include an affirmative directive requiring Fannie Mae and Freddie Mac to fully comply with the DTS mandate in a market-significant manner with respect to all segments of the mainstream manufactured housing market, including both real estate and chattel-based manufactured home consumer loans.

Accordingly, for all of the foregoing reasons, FHFA must ensure that any final Enterprise Regulatory Capital Framework rule is structured and worded in such a way that the said rule does not subvert or impinge upon – in any way – the GSEs' separate and severable statutory duty to

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[6] See, 85 Federal Register, No. 126, Proposed Rule – "Enterprise Regulatory Capital Framework," (June 30, 2020), p. 39274 at p. 39275.

[7] For example, Table 14 of the proposed rule, addressing single-family "risk multipliers," would continue and seek to falsely legitimate the GSEs' longstanding discrimination against mainstream manufactured housing consumer loans by assigning even "performing" manufactured housing loans a significant 1.3 "risk multiplier," and assigning manufactured housing "Non-modified RPLs" and "Modified RPLs" the highest risk multipliers in those categories – i.e., 1.8 and 1.6 respectively. In order to facilitate full compliance with the DTS mandate, these risk multipliers for mainstream manufactured housing should be reassessed and significantly reduced or eliminated – i.e., conformed to the "1 unit" base multiplier of 1.0 in any final rule in this docket. See, 85 Federal Register, supra at p. 39309, Table 14 – "Risk Multipliers."

fully and properly serve the manufactured housing market under DTS in a market-significant manner. Therefore, MHARR asks that FHFA incorporate appropriate and necessary protections (and/or waivers if applicable), as summarized above, for the DTS obligations of the two Enterprises pursuant to the DTS statutory mandate.

Sincerely,

Mark Weiss
President and CEO

cc: Hon. Mark Calabria
Hon. Michael D. Crapo
Hon. Maxine Waters
Hon. Ben Carson
Ms. Sandra Thompson