STATEMENT OF MARK WEISS, PRESIDENT AND CEO
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AT THE OCTOBER 16, 2020 FHFA "DUTY TO SERVE" LISTENING SESSION

The Manufactured Housing Association for Regulatory Reform (MHARR), represents smaller and medium-sized independent producers of manufactured housing regulated under federal law by the U.S. Department of Housing and Urban Development (HUD). MHARR's member companies are located in and produce homes that are sold in all regions of the United States.

My appearance today, unfortunately, marks the fourth time that I have addressed one of these Duty to Serve (DTS) "listening sessions."

Its "unfortunate," because MHARR should not have to appear every year – year-in, year-out – to first, stress the importance of DTS for the mainstream HUD Code manufactured housing market and, second, to point out yet again, how the vast majority of that market, and the vast majority of mainstream manufactured housing consumers, remain completely *unserved* by Fannie Mae and Freddie Mac, now going into the thirteenth year after Congress' enactment of DTS.

Yet, that is the sad reality.

The Duty to Serve Underserved Markets (DTS) provision of the Housing and Economic Recovery Act of 2008 (HERA), specifically addresses federally-regulated manufactured housing, and was designed as a remedy for the long-term failure of both Fannie Mae and Freddie Mac, among other things, to properly serve the mainstream, affordable manufactured housing market and the mostly lower and moderate-income consumers who rely on inherently affordable, non-subsidized manufactured housing.

DTS, accordingly, instructs Fannie Mae and Freddie Mac, and the Federal Housing Finance Agency (FHFA) as their federal regulator, to securitize and facilitate a secondary market for mortgages and personal property, or "chattel" loans, on manufactured homes for "very low, low and moderate-income families."

DTS is thus Congress' response to the historical failure of both Fannie Mae and Freddie Mac to support consumer financing for mainstream manufactured housing which provides safe, decent and affordable housing and homeownership for American families – housing that is available, accessible and, most importantly, inherently affordable for Americans at every rung of the economic ladder.

Twelve years following the enactment of DTS, however, it is abundantly clear that its implementation by Fannie Mae and Freddie Mac -- and FHFA as a federal government agency and the Enterprises' statutory regulator -- has likewise been and, without immediate and significant correction will continue to be, a complete and utter failure both for American consumers of affordable housing and for the manufactured housing industry including, most specifically, the industry's smaller businesses, which have been disproportionately harmed by the unavailability of

ready, Enterprise-supported, price-competitive consumer financing for mainstream, federally-regulated manufactured homes.

Using the statistics presented in FHFA's own DTS "dashboard," together with information highlighted in related Fannie Mae and Freddie Mac DTS reports, four key facts emerge which illustrate FHFA's failure to faithfully implement DTS in relation to DTS and the mainstream HUD Code market.

First, Fannie Mae and Freddie Mac, with FHFA's acceptance and approval, some twelve years after the enactment of DTS, currently have no loan purchase programs whatsoever for manufactured housing personal property loans which, according to U.S. Census Bureau data, currently constitute some 76% of all new manufactured home placements and, as recently as 2015, constituted a full 80% of all U.S. manufactured home placements, according to the same Census Bureau survey.

Nor are Fannie Mae or Freddie Mac proposing any chattel loan purchasing program through the 2021 DTS "Implementation Plan" extension period. To the contrary, the minimal personal property "pilot" program previously proposed by Freddie Mac for 2019 and 2020 is eliminated under the proposed 2020 Plan modifications and is absent from Freddie Mac's 2021 DTS Implementation Plan extension proposal.

Fannie and Freddie thus propose to leave the largest single segment of the manufactured housing consumer loan market – representing the industry's most affordable homes -- completely unserved under DTS through the entirety of the 2020-2021 DTS Plan period.

Consequently, by the end of the 2021 extension period – absent some other action by FHFA – thirteen years will have passed since the enactment of DTS, with the overwhelming majority of the federally-regulated manufactured housing market and manufactured housing consumers left completely unserved by Fannie Mae and Freddie Mac under DTS. Meanwhile, FHFA has – and continues – to falsely report and certify to Congress that the Enterprises are complying with all aspects of the DTS mandate when, in the case of manufactured housing, they clearly are not.

Second, while Fannie Mae and Freddie Mac have purchased loans for manufactured homes titled as real estate for DTS credit, the real estate segment of the overall manufactured housing market, in and of itself, is quite small, constituting, at most, 19% of the market, according to Census Bureau data and as little as 13% of manufactured housing market as recently as 2014, according to the same Census Bureau survey.

The relatively small market portion of those real estate loans, moreover, is further extenuated by the fact that of the loans purchased by Fannie Mae and Freddie Mac for DTS credit since 2017, only 30 to 34% have been for new home purchases.

Thus, purchases of manufactured housing real estate loans by both Fannie Mae and Freddie Mac, constituted just 5% of the new HUD Code market in 2017, 5.78% of the new HUD Code market in 2018, and just 6.46% of the new HUD Code market in 2019. Conversely, that left 93% of the new HUD Code market completely unserved in 2019, and more than 94% of the new HUD Code

market completely unserved in both 2018 and 2017. Yet that sorry figure – more than a decade after the enactment of DTS -- is somehow deemed to be full "compliance" by FHFA in reports and certifications to Congress. This is utter and complete nonsense.

Third, DTS compliance reports submitted to FHFA by Fannie Mae and Freddie Mac show that purchases of new "MH Advantage" and "ChoiceHome" loans -- deemed "Cross-Mod" homes by the manufactured housing industry's largest corporate conglomerates and their national organization – and condescendingly described by Fannie and Freddie as an "enhanced manufactured housing loan product for *quality* manufactured housing" (emphasis added) (falsely implying that mainstream manufactured homes constructed to the exact same federal building code are somehow *not* "quality" homes), respectively were either minimal or non-existent through the entire 2017-2020 reporting period, with no new or additional purchases proposed or planned during the 2021 Implementation Plan extension period.

Freddie Mac, accordingly, purchased zero "ChoiceHome" manufactured home loans during the 2017-2020 reporting period, while Fannie Mae, in 2019, "purchased six MH Advantage loans, of which two were eligible for DTS credit." (Emphasis added).

MH Advantage/ChoiceHome activity in 2019 thus represented 0.002% of the total new HUD Code market. Moreover, Fannie Mae, in its proposed 2020 DTS Implementation Plan modifications, seeks permission to "replace loan purchases" under its MH Advantage program, with "expanded outreach and education activity." Consequently, it appears there will be no MH Advantage or ChoiceHome purchases through 2020.

This failure was not only completely predictable, but exposes a conscious and deliberate effort by FHFA to sanction and countenance an ongoing effort by Fannie Mae and Freddie Mac to distort, misdirect and fundamentally undermine the legitimate and laudable purposes of DTS.

At the most basic level, the failure of the MH Advantage and ChoiceHome programs to produce any significant results, precisely mirrors Fannie Mae's failed pre-DTS "MH Select" program. That program, with requirements and supposed benefits very similar to MH Advantage, produced exactly zero originations over its life-span. It was thus entirely predictable that a substantially similar program – offering alleged support for homes costing two to three times that of a typical manufactured home – would likewise fail, as has been the case with MH Advantage, ChoiceHome homes, and the Manufactured Housing Institute's trademarked "Cross-Mod" product. Among other things, this demonstrates that both Fannie and Freddie – and their federal regulators – do not learn from history and, more specifically, their prior mistakes (including not only "MH Select," but the subprime debacle as well). It also demonstrates, moreover, that the Enterprises simply dislike and reject mainstream manufactured housing, and have no interest in taking any market-significant action to advance the availability of cost-competitive consumer financing for those homes and those consumers

Even worse, though, is support for a much more costly and much less affordable specialty "Cross-Mod" product what DTS was supposed to do?

Quite the contrary, DTS was worded and designed to provide consumer financing support for mainstream, affordable, HUD Code manufactured homes, not costly "hybrids" that provide an ostensible, quasi-site-built-housing "comfort zone" for Fannie Mae, Freddie Mac and FHFA, but have been consistently rejected by the market. Indeed, nowhere does DTS state or even hint that it constitutes a license for FHFA, Fannie Mae, or Freddie Mac functionaries to act as de facto architects, engineers, landscapers, or community planners in deciding, for – and in the place of – real consumers, what types of amenities or features should be included in a home. This represents a type of chauvinism that is indefensible and ultimately both pointless and unavailing in a free market.

Moreover, it is unconscionable for any federal agency, such as FHFA, or any federally-backed organization, such as Fannie Mae and Freddie Mac, to not only fail to implement a remedial federal law like DTS over the course of more than twelve years, but worse yet, to adopt and implement a distortion and diversion of DTS – which MH Advantage and ChoiceHome are – in order to discriminate against smaller industry businesses and consumers of the industry's most affordable homes.

Fourth, according to data referenced and reported by Freddie Mac itself, in the absence of meaningful, market-significant DTS support for the mainstream, affordable manufactured housing market, "more than 90%" of the manufactured housing personal property loans reported in the 2018 Home Mortgage Disclosure Act (HMDA) data compiled by the federal government, were "higher-cost originations."

This data confirms a crucial point that MHARR has long asserted regarding DTS and the failure of FHFA to require its full and faithful implementation, as written, for mainstream, affordable manufactured homes – i.e., that the absence of full and legitimate DTS implementation across the entire manufactured housing market, and particularly its dominant personal property financing sector, effectively forces consumers who are not otherwise totally excluded from the market, to obtain financing from one of the handful of "portfolio" lenders, affiliated for the most part with the industry's largest corporate conglomerates, at a higher interest rate than would otherwise be the case in a fully-competitive market *with* DTS support from Fannie Mae and Freddie Mac. Fannie and Freddie, and FHFA, accordingly, are effectively accomplices in maintaining a less-than-fully competitive manufactured housing consumer financing market, maintaining needlessly higher-interest rates within that market, discriminating in favor of the industry's largest corporate conglomerates and their financing affiliates at the same time that they discriminate *against* smaller industry businesses and consumers, all while subjecting consumers to such higher costs or completely excluding others from the housing market altogether.

The upshot of all this is that the approach to DTS taken by Fannie Mae and Freddie Mac, and approved and supported by FHFA as their federal regulator, and the federal agency entrusted by the law with implementing DTS, has failed -- and failed completely, as shown by the relevant facts and statistics. Serving just a fraction of one small segment of the industry (that was being served already, pre-DTS) – while leaving the industry's most affordable homes completely unserved – cannot legitimately be understood as representing compliance, or even partial or "good faith" compliance with DTS, and should not be misrepresented to Congress as such.

Given this failure by FHFA to properly and faithfully implement DTS within the mainstream manufactured housing market for more than a decade, it is no surprise whatsoever, that sales of new manufactured homes – due in part to the unavailability of price-competitive consumer financing, particularly within the chattel market – is, and for more than a decade, has been, far below historical industry norms. Worse yet, industry production and sales actually declined in 2019, and are poised to decline again in 2020, if current market trends remain in place. This is notwithstanding significant sales growth in other segments of the housing market and a continuing affordable housing crisis.

Thus, as MHARR has consistently maintained, the lack of DTS support for the overwhelming majority of HUD Code manufactured housing purchasers, means that those consumers are being subject to baseless discrimination resulting higher interest rates than would be the case in a fully-competitive market with DTS support, and that untold numbers of otherwise qualified manufactured housing purchasers are being excluded from both the HUD Code market and homeownership altogether by the lack of DTS support in direct contravention of both the letter and purpose of the DTS statute.

Meanwhile, the primary beneficiaries of this absence DTS support are the portfolio lenders affiliated with the industry's largest corporate conglomerates which dominate a market that is – and has been -- less than fully-competitive due to the absence of GSE securitization and secondary market support.

Years ago, when DTS was first enacted, the excuse *de jour* from Fannie, Freddie, and FHFA, as well, for totally ignoring and failing to support the HUD Code personal property consumer loan market under DTS, was an alleged "lack of information" on the performance of such loans. Whether that was true and accurate at the time is unknown, because of the unavailability of Freedom of Information Act (FOIA) access to Fannie Mae and Freddie Mac documents.

But, that is not the case any longer as is shown by Freddie Mac's recent report on "Manufactured Home Loan Performance (For Originations Between 2009 and 2019)." Given that data, there is no longer any basis or excuse – if there ever was one to begin with – for the Enterprises to continue to refuse DTS support for the vast majority of manufactured home loans.

Ultimately, FHFA has allowed Fannie Mae and Freddie Mac to trifle with and evade the DTS mandate with respect to federally-regulated manufactured housing based on excuses and dodges that are both disingenuous and outrageous, and have been debunked time and again by MHARR for more than a decade. Indeed, given indications that both Fannie and Freddie have had access to manufactured housing consumer loan performance data for some time, it appears more and more likely that their extended failure to fully and faithfully implement DTS with respect to manufactured housing is a scandal that has played-out right in front of FHFA regulators.

Addressing matters such as this, where FHFA has certified compliance with DTS for the manufactured housing market when such compliance – over the course of twelve years has been a myth and a charade – is another example of why MHARR was formed. MHARR has addressed and resolved similar matters with regard to production laws and regulations, and will do the same here.

FHFA is responsible for fully and faithfully enforcing the DTS law as written. It is not the function of FHFA to look the other way when Fannie and Freddie either ignore the DTS mandate, or affirmatively discriminate against the industry's smaller businesses as well as mainstream manufactured housing consumers. Indeed, it is incongruous how FHFA, as a federal agency sworn to faithfully uphold the law, can: (i) permit such misconduct by the parties it is responsible for regulating and do nothing to correct that misconduct; and (ii) misrepresent that misconduct to Congress by certifying that those same regulated entities are, supposedly, in "compliance" with the law when they clearly are not.

FHFA, accordingly, should pause this matter and immediately begin an internal investigation to determine how DTS implementation within the manufactured housing market has been allowed to remain stagnant for more than twelve years. It should simultaneously structure and implement – within a short and finite timeframe -- a new, legitimate and effective DTS implementation program for the entire mainstream manufactured housing market for the benefit of all industry and consumer stakeholders, while rejecting any approach, like the present failed approaches, which effectively seek to choose winners and losers in a manner that is inconsistent with a free market.

MHARR, for its part, is committed to ensuring the full and faithful implementation of DTS within the mainstream manufactured housing market, and reserves its right to seek appropriate remedies from the Administration, or Congress, or both, as necessary, in the event that FHFA does not correct and reverse the travesty that has played out under DTS for more than a decade.

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This is part of an MHProNews Report, Fact Check and Analysis found at this link below.

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