



# Manufactured Housing Association for Regulatory Reform

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February 6, 2018

VIA ELECTRONIC SUBMISSION AND FEDERAL EXPRESS

Hon. Michael Crapo  
Chairman  
Senate Banking, Housing and Urban  
Affairs Committee  
U.S. Senate  
Washington, D.C. 20510

Hon. Sherrod Brown  
Ranking Member  
Senate Banking, Housing and Urban  
Affairs Committee  
U.S. Senate  
Washington, D.C. 20510

Hon. Jeb Hensarling  
Chairman  
House Financial Services Committee  
U.S. House of Representatives  
Washington, D.C. 20515

Hon. Maxine Waters  
Ranking Member  
House Financial Services Committee  
U.S. House of Representatives  
Washington, D.C. 20515

Re: Enterprise Duty to Serve Underserved Markets

Dear Chairman Crapo, Ranking Member Brown, Chairman Hensarling and Ranking Member Waters:

I am writing to you on behalf of the members of the Manufactured Housing Association for Regulatory Reform (MHARR). MHARR is a Washington, D.C.-based national trade association representing producers of manufactured housing regulated by the U.S. Department of Housing and Urban Development (HUD). MHARR's members are primarily smaller and medium-sized businesses from all regions of the United States.

Manufactured housing provides the greatest source of low-cost housing and home ownership that meets the needs of lower and moderate-income Americans without the need for federal subsidies. Recognizing this fact, Congress enacted, as part of the Housing and Economic Recovery Act of 2008 (HERA), the Enterprise Duty to Serve Underserved Markets (DTS) mandate, directing the Government Sponsored Enterprises (GSEs) to develop "loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages for very low-, low-, and moderate income families" with respect to three statutorily-designated "underserved markets," including federally-regulated manufactured housing (*see*, 12 U.S.C. 4565(a)(1)(A)). Congress further specified that DTS, in relation to federally-regulated manufactured housing, would include both manufactured housing real estate loans and personal property (*i.e.* chattel) loans secured solely by the home itself (*see*, 12 U.S.C. 4565(d)(3)). This is extremely significant, in that chattel loans, which provide lower and moderate-income consumers with access to the manufactured housing industry's most affordable homes, currently comprise 80% of all manufactured home purchase loans.

From the outset, though, the GSEs (as stated in 2010 written comments to FHFA) strenuously opposed any application of DTS to the manufactured home chattel finance market. During this time, production of manufactured homes collapsed to an all-time annual low of 49,683 homes (in 2009), with only a slow recovery since. And now, after ten years of delay and inaction with respect to DTS by the GSEs and their federal regulator, the Federal Housing Finance Agency (FHFA), Fannie Mae and Freddie Mac have produced alleged DTS “implementation” plans (for 2018-2021) which are utterly inadequate to meet the mandate of Congress. More importantly, they do not meet the financing needs of lower and moderate-income manufactured homebuyers, who will continue to be underserved. This will deprive millions of lower and moderate-income Americans of any opportunity for homeownership at a time of (once-again) expanding “worst case” housing needs as determined by HUD.

Over a three-year period that will see approximately 270,000 manufactured homes produced (even with no assumed market growth), the DTS implementation plans submitted by the GSEs and “approved” by FHFA, would provide for the purchase of a mere 4,000 manufactured housing chattel loans representing – *at most* -- a paltry 1.85% of the overall chattel market. Worse yet, the DTS plans approved by FHFA would do virtually nothing to increase financing for customers of the industry’s smaller manufacturers, while incorporating multiple sops for the industry’s market-dominant producers and their various corporate affiliates. Indeed, these producers – playing to the GSEs pre-existing prejudices -- appear to be engaged in an effort that could redirect what little DTS activity has been proposed (or may occur) away from mainstream, affordable HUD Code manufactured housing, to a new “class” of higher-cost homes that does not yet exist, but which they would seek to develop on a proprietary basis (see, documents attached). This would, in essence, divert the “duty” mandated by Congress – and the benefits flowing from it – away from existing, mainstream HUD Code manufactured housing which is inherently affordable for lower and moderate-income Americans, to a new type of hybrid homes, costing as much as \$220,000.

All of this represents an unacceptable failure to implement DTS as prescribed by Congress, and in a manner that would benefit the vast majority of manufactured housing consumers. MHARR, therefore, calls on Congress to address this matter in a definitive fashion, beginning with proper oversight and accountability.

Sincerely,



Mark Weiss  
President and CEO

cc: Hon. Dr. Benjamin Carson (Secretary, U.S. Department of Housing and Urban Development)  
Hon. Gary Cohn (Director, National Economic Council)  
Hon. Mick Mulvaney (Director, U.S. Office of Management and Budget)

Attachments



By Mark Weiss

JANUARY 2018

## “Diversion, Distraction or Destruction -- and Time to Raise the Red Flag?”

According to recent press reports, nearly fifty percent (or more) of the HUD Code manufactured housing production market is currently held by one manufacturer, Clayton Homes, Inc. (Clayton), a wholly-owned subsidiary of Berkshire Hathaway Corporation (BHC). At the same time, at least thirty-five percent of the manufactured home consumer finance market (as acknowledged by BHC in its 2016 Shareholder Letter) is controlled by Clayton financial affiliates Vanderbilt Mortgage Corporation (Vanderbilt) and 21<sup>st</sup> Mortgage Corporation (21<sup>st</sup> Mortgage). As of 2015, third-party studies further indicated that *at least* another twenty percent of the HUD Code production market was held by two other large corporate conglomerates, Cavco Industries, Inc. (Cavco) and Champion Homes, Inc. (Champion). All three of these production companies (*i.e.*, Clayton, Cavco and Champion), moreover, are members of the same trade organization, the Manufactured Housing Institute (MHI), which publicly claims to represent companies responsible for “85 percent of [the HUD Code] manufactured homes produced each year.”

Whether this particular statistic is entirely accurate or not is immaterial. What *is* material, is that the juggernaut created by this combination of the largest industry producers, is having two related – and simultaneously negative -- impacts for the broader industry, for the smaller businesses that have constituted the traditional core of the industry, and for the moderate and lower-income homebuyers that the HUD Code industry has traditionally served.

On the one hand, this “consortium” of companies (among others), acting through MHI, has arguably failed, over the course of nearly two decades, to accomplish -- or even seek -- the full and proper implementation of the Manufactured Housing Improvement Act of 2000, with all of its intended benefits for manufactured housing and manufactured homebuyers but, instead, has taken actions and advocated positions that MHARR has had to block, oppose and/or fix (including, but not limited to: excessive energy regulation; unnecessary fire sprinkler standards, expanded in-plant regulation, and the selection of a career program administrator, rather than a non-career appointee, contrary to the law, to name just a few) in order to protect the industry and consumers. On the other, as is now becoming evident through their role in pursuing a so-called “new class” of manufactured homes, is an alarming trend toward activity that could further undermine free-market competition and concentrate yet more market power in the hands of the same few dominant companies.

Such combined activity by the *largest three* producers within the manufactured housing market (with Champion having now acquired significant *additional* market share through its reported merger with the Skyline Corporation) to, in MHI’s words, “help [MHI] members create”

a new “class” of manufactured homes, and simultaneously “help with MHI’s legislative and regulatory efforts to change the existing HUD Code.” (See, February 8, 2017 MHI “Housing Alert”) (Emphasis added), involves decisions and actions that warrant careful analysis and consideration not only by the broader industry, but by relevant authorities as well. Indeed, while couched in generalities and vagaries over the past year, what this activity ultimately means to the industry as a whole, to the multitude of smaller industry businesses struggling to compete and survive in an over-regulated market increasingly dominated by a handful of large producers and their finance affiliates, and to the mostly lower and moderate-income Americans who rely on traditional manufactured housing as the nation’s primary source of inherently affordable, non-subsidized housing and home-ownership, *could* become a matter of economic life or death – *i.e.*, a matter of the survival of the industry, its businesses and its products as they have existed for well-over a half-century, or their *replacement* by something far different.

Given the potentially far-reaching, industry and market-altering consequences of this secretive activity, it is both appropriate *and necessary* to ask: (1) *what* this “new class” of manufactured home initiative entails; (2) *by whom* is it being advanced and *how*; (3) *why* is it being advanced; (4) *why* is it being advanced *now*; and (5) *who*, ultimately, would benefit – or suffer – from its realization (or failure)? And, flowing from *that* analysis, is the proverbial sixty-four thousand-dollar question – *i.e.*, what should smaller businesses within the industry and the American consumers who rely upon affordable, non-subsidized manufactured housing, as provided by the industry in its current and long-term traditional configuration, *do* (or *seek to do*) about all this?

These crucial questions -- and their answers – do not exist in a vacuum. Instead, they arise against a specific backdrop and context of activity by and within the broader industry that is, itself, highly relevant. That context, in a nutshell, for a comprehensively federally-regulated industry – and notwithstanding the significant regulatory reform opportunities presented by the election of President Trump – is one of regulatory policies and actions (including the production and financing of HUD Code homes) that have devastated manufactured housing production levels (down 78 percent since 1998 despite a slow rebound from historic-low production levels in 2009), eliminated significant numbers of mostly smaller industry businesses, and have simultaneously allowed and driven an unhealthy consolidation within the industry’s production and post-production sectors that could ultimately be highly detrimental to both the industry and its consumers.

These actions and policies include, but are not limited to: (1) excessive, unnecessary and unreasonably-costly federal regulation (particularly over the last four years) by HUD that has disproportionately harmed smaller industry businesses while simultaneously benefiting the largest industry conglomerates; (2) pending efforts by other federal agencies to impose unnecessary, draconian and debilitating regulations on manufactured housing (including, but not limited to so-called “energy conservation” standards) that will also result in excessive, unreasonable and unnecessary regulatory compliance-cost increases; (3) an inadequately-competitive consumer financing market, dominated by the BHC-supported Clayton finance subsidiaries, as a consequence of the discriminatory failure of Fannie Mae and Freddie Mac to provide virtually any securitization or secondary market support for manufactured housing consumer loans; (4) glacial progress (if any) toward the legitimate (*i.e.*, market-significant) implementation of the Duty to Serve Underserved Markets (DTS) mandate for the eighty-percent of the HUD Code market

represented by chattel loans; and (5) the baseless, discriminatory local exclusion of manufactured homes from vast swaths of the country (particularly urban and suburban areas), among other things.

And, it is at the intersection of these demonstrable failures and the overriding self-interest of the industry-dominant corporate conglomerates, where the answers to the preceding questions can be found.

First, for all the secretiveness that has shrouded the *details* of this “new class of home” activity, its general contours and objectives – *i.e.*, questions 1 and 2 above, *what* the “new class” of manufactured home activity is all about, *who* is advancing it and *how* -- have been the subject of a great deal of pseudo-public talk and targeted disclosures. Thus, in a February 8, 2017 “Housing Alert,” MHI states that the initiative’s “goal is to obtain information on [the] wants, needs, preferences and perceptions [of various underserved homebuyers] and then develop a strategy to help members create an offering that meets the housing needs of these groups ... and help with MHI’s legislative and regulatory efforts to change the existing HUD Code. For this research initiative, MHI is working with a diverse group of its manufacturer members and Ducker Worldwide, a respected independent consultant with extensive experience in the residential housing industry, including both site-built and manufactured housing” (Emphasis added). The same “Housing Alert” identifies members of the “Task Force” responsible for the “new class of home” initiative, with the President and CEO of Clayton Homes, Inc., the Chairman and CEO of Cavco Industries, Inc., the President of Champion Home Builders, the President and CEO of Skyline Corporation (now reportedly merging with Champion) and the President of MHI, constituting five of the seven named members, and the “Managing Principal of Ducker Worldwide” identified as the sixth member of the “Task Force.”

From this MHI description, certain key facts emerge: (1) the initiative and potential development of a “new class” of manufactured homes is restricted to MHI “members;” (2) the initiative and potential development of a “new class” of manufactured homes is directed and controlled by a sub-group of MHI members that, in turn, is dominated by the industry’s largest manufacturers; (3) the initiative “Task Force,” or, more accurately, “control group,” includes no small businesses or small business representatives; (4) the initiative control group includes no representative(s) of a business or businesses engaged solely or specifically in the industry’s post-production sector; and (5) the initiative control group includes no state association representatives -- among other things. The “new class” of homes “initiative,” therefore, is a cooperative project of a market-dominant group of ostensible “competitors,” apparently seeking coordinated market advantage – and expanded market dominance.

In addition, the “new class” of homes initiative is expressly tied by MHI to efforts to “change” the existing federal standards governing the construction, safety and installation of manufactured homes in unspecified and unstated ways, presumably to accommodate (or otherwise facilitate) unnamed aspects of the “new class” of home and those who produce (and are otherwise connected with sales of) that “new class” of homes. Thus, development of the “new class” of manufactured home by a restricted group of the industry’s three largest producers is targeted to drive corresponding government relations advocacy seeking changes to existing legal requirements (or, potentially new legal criteria) relating to those homes and their sale. This “new

class” of homes, in turn, would have the likely effect of relegating traditional manufactured homes back to the status of “trailers,” thereby effectively undermining the work done by MHARR and others over the course of decades to achieve statutory and policy parity between traditional manufactured homes and all other types of residential construction, with corresponding negative impacts for producers and retailers of those homes and current owners/purchasers of those homes in the form of potentially reduced value and suppressed appreciation.

Nor is this apparent effort to “grease the skids” and elevate the status of a “new class” of manufactured homes – controlled by the industry’s market-dominant producers -- necessarily restricted to production standards and regulations.

Sales and production of traditional manufactured homes have been unnecessarily restricted (for decades) due, in part, to the unavailability of secondary market and securitization support for manufactured housing consumer loans by the Government Sponsored Enterprises (GSEs), Fannie Mae and Freddie Mac. This lack of support has prevented full and robust competition within the manufactured housing market, has allowed the existing market-dominant companies to maintain higher-cost interest rates through their captive finance affiliates, and has limited the availability of consumer financing for potential purchasers of manufactured homes. Congress sought to remedy this ongoing failure through the Duty to Serve Underserved Markets provision of the Housing and Economic Reform Act of 2008 (HERA), but the GSEs have consistently resisted -- and continue, at a minimum, to resist and delay -- the market-significant implementation of DTS, particularly with respect to manufactured housing chattel loans. Thus, it is relevant that in July 2017 -- prior to FHFA approval of the Fannie Mae and Freddie Mac DTS “final” so-called “implementation” plans -- the aforementioned “Managing Principal of Ducker Worldwide” leading the “new class of homes” research initiative and serving as a member of the “new class of homes” control group, led (according to a Ducker Worldwide publication) “a seminar for various leaders of Fannie Mae and Freddie Mac” coincidentally addressing the same topics as his “research” work for MHI (which dates back to *at least* February 2014).

Whether this contact with FHFA and the GSEs was isolated or is part of a broader pattern is not known. Nor is it clear what potential impact this contact (or possibly others) might have had on the “final” GSE DTS “implementation” plans or their approval by FHFA, which -- some 10-13 years-out from the enactment of DTS -- would serve, at a maximum, a paltry 1.85% of the manufactured housing chattel loan market.

But given the lack of market-significant implementation of DTS in the now-FHFA-approved “final” DTS implementation plans, and other aspects of both plans that would empower the largest industry conglomerates and their respective affiliates and surrogates to influence the alleged “implementation” of DTS, detailed in a recent (January 5, 2018) MHARR News Release – including, but not limited to: (1) an announcement that Fannie Mae will become a (presumably dues-paying) “member of the Manufactured Housing Institute,” (presumably utilizing funds subject to FHFA/federal government conservatorship); (2) an announcement by Fannie Mae that it will create a “manufactured housing advisory council” that will include “one industry trade association” and multiple other members, but only one “smaller” manufacturer; (3) an announcement by Freddie Mac that it will “partner” with “Next Step Network, Inc.,” a beneficiary of extensive grants from Clayton and MHI to, among other things, conduct a “working group,” the



“Smart MH Task Force,” to “*provide market intelligence and data to inform loan product needs,*” without ensuring either a balance of interests or the inclusion of small businesses or small business representatives within that “working group;” and (4) creation of a new “MH Select” program (developed through the involvement of a former MHI Vice President) for certain “*quality manufactured homes*” based on criteria that exceed certain HUD standards (including “back door” energy criteria promoted by an MHI affiliate, the “Systems Building Research Alliance”) – one is left to wonder what impact the Ducker Worldwide (and possibly other contacts with the GSEs and FHFA) might have had, given the market-based reality that every day which goes by *without* the market-significant implementation of DTS, is a massive economic gift to Clayton, the Clayton finance affiliates, BHC and their respective beneficiaries.

As to questions 3, 4 and 5, above – *i.e., why* this “new class of homes” initiative is being advanced; *why* it’s being advanced *now*; and *who*, ultimately, will benefit from its realization, the answers should be mostly apparent. Quite simply, it would appear that this “initiative” it is being advanced -- primarily – to benefit the industry’s largest conglomerates by allowing those conglomerates to: (1) maximize and expand their existing market advantages and domination; and (2) further weaken and undermine remaining competitors by effectively positioning traditional manufactured homes as a “second-class” product in terms of both regulation, financing terms and financing availability.

Moreover, it appears that this effort is being advanced *now* because the industry stands at a political/historical crossroads with the election of a transparently anti-regulation, pro-jobs, pro-small business and pro-affordable homeownership Administration in Washington, D.C. The manufactured housing industry, as MHARR has stressed continually, is the beneficiary of two outstanding federal laws, the 1974 manufactured housing law, as amended by the Manufactured Housing Improvement Act of 2000 and the “Duty to Serve.” These laws, as written and enacted, should provide manufactured housing and the manufactured housing industry with *significant* market advantages, sufficient to support annual production levels in the hundreds-of-thousands-of homes, *if they were fully and properly* implemented. The fact that they have not been implemented in that manner, has been the constant focus of MHARR – and the target of most of its legislative and administrative activity -- for years. But now, just when it appears that an administration is in place which may *finally* be committed to *fundamentally* change the leadership, composition and nature of the HUD manufactured housing program in ways that could open the floodgates for new production, new producers and increased competition, based on reduced regulatory burdens and greater affordability for millions of Americans, the industry-dominant conglomerates within MHI seem to be shifting the focus of that organization in ways that would help to preserve and expand the conglomerates’ market-dominance to the detriment of others.

None of the secretiveness that has surrounded the “new class” of homes activity is necessary to achieve any *legitimate* purpose. New types of manufactured home designs with new features or amenities are not, in any way, objectionable. The manufactured housing industry should – and must – evolve in order to grow and expand. New features, new designs and new models, even if they exceed current federal standards, are not problematic in and of themselves. The HUD Code, as established by federal law, is a *base* standard that can always be exceeded. And, if need be, new ideas can be brought to the Manufactured Housing Consensus Committee (MHCC) for proposed changes to the standards and regulations if they achieve consensus support. But there is

a legitimate, open, public process to achieve all this, which does not involve or require secretiveness, restrictions on involvement or participation, or coordination and de facto control by the industry's largest conglomerates. Nor does it require changes to a law that itself is flexible and adaptable enough to meet the changing needs of consumers and the industry -- when it is entrusted to the proper hands.

The issue, therefore, is ultimately one of intent and purpose. New products are fine. But a secretive program to change the essence of manufactured housing, that would effectively relegate the industry's existing product(s) to some sort of "second-class" status -- with corresponding changes to the industry's governing law -- for the purpose of securing even greater competitive advantages for already market-dominant industry businesses, is not fine and, in fact, must be resisted by the broader industry and consumers as well.

*Mark Weiss*

*MHARR is a Washington, D.C.-based national trade association representing the views and interests of independent producers of federally-regulated manufactured housing.*

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Preserving the American Dream of Home  
Ownership Through Regulatory Reform

# MHARR

# NEWS

**FOR IMMEDIATE RELEASE**

**Contact: MHARR  
(202) 783-4087**

## **AFTER DITHERING TEN YEARS, FHFA, FANNIE MAE AND FREDDIE MAC FINAL DTS PLANS FAIL CONSUMERS AND INDUSTRY**

**Washington, D.C., January 5, 2018** – The Manufactured Housing Association for Regulatory Reform (MHARR) reports that after ten years of dithering, the final “Duty to Serve Underserved Markets” (DTS) plans filed by Fannie Mae and Freddie Mac -- approved by their regulator, the Federal Housing Finance Agency (FHFA) and publicly released on December 18, 2017 -- are a prescription for yet more inaction, delay and a continuing indefensible failure to serve the vast majority of the national HUD Code manufactured housing market, contrary to the clear, direct and unequivocal mandate of Congress. Instead, the so-called DTS “compliance” plans represent an ongoing sop to the industry’s largest corporate conglomerate and its captive finance companies, which will continue to restrict the growth and expansion of the industry, while denying access to the nation’s most affordable housing and home-ownership resource to millions of lower and moderate-income American families. At the same time, the final plans will have the effect of forcing those who do remain in the HUD Code manufactured housing market into the higher-cost loans offered by those captive companies. This utter failure to implement DTS in a market-significant way, some ten years after its enactment, now warrants congressional intervention, oversight and, if necessary, amendments to the DTS law.

Despite the fact that personal property or “chattel” loans (i.e., loans secured by the home itself and not the land on which the home is sited) constitute 80% of all manufactured home consumer purchase loans according to data compiled by the U.S. Census Bureau – a figure that itself has grown by a factor of 25% since 2007 – the DTS “compliance” plans filed by Fannie Mae and Freddie Mac (scheduled to take effect on January 1, 2018, barring any further action by FHFA) provide for nothing more than token “pilot programs” for the securitization and secondary market support of such loans over the three-year period that the plans cover.

Freddie Mac, for its part, projects purchases of 200 to 500 manufactured home chattel loans in year two (2019) of its final three-year DTS plan, and another 600-1,500 in year three (2020), subject, in its entirety, to separate approval by FHFA, which may or may not occur. Fannie Mae, meanwhile, projects purchases of 1,000 manufactured home chattel loans in both year two (2019) and year three (2020) of *its* DTS “implementation” plan. With approximately 90,000 HUD Code manufactured homes projected to be sold in 2017, even if no market growth were assumed during the years covered by the three-year DTS plans (i.e., 2018-2020), that period would see retail sales of approximately 270,000 HUD Code manufactured homes, with approximately 216,000 (i.e., 80%) of those homes financed through chattel loans, again, assuming no change in the composition or economic characteristics of the overall market.

**Manufactured Housing Association for Regulatory Reform**

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Against this baseline, the chattel loan programs envisioned by Fannie Mae and Freddie Mac – even at maximum projected capacity -- would serve 4,000 purchasers, or a mere 1.85% of the manufactured housing market through 2020 – more than a decade after the enactment of DTS. Chattel loan purchases at these levels, as was detailed in MHARR’s July 10, 2017 written comments opposing the proposed DTS implementation plans filed by the two government-sponsored mortgage giants in May 2017, would constitute a microscopic portion – far less than one-one-hundredth of one percent -- of the total mortgage portfolios of both Fannie Mae and Freddie Mac, representing: (1) a blatant, continuing failure by Fannie Mae and Freddie Mac to serve the manufactured housing market; (2) a continuation of blatant, baseless discrimination against the lower and moderate-income Americans who rely on affordable, non-subsidized manufactured housing the most; (3) a continuing abuse of – and failure to comply with – the Enterprises’ mission and role as prescribed by their respective charters; and (4) a flagrant failure by FHFA, as the Enterprises’ regulator and conservator, to enforce full compliance with the statutory DTS mandate.

To rationalize this pathetic, totally inadequate level of support for the nation’s most affordable non-subsidized housing resource in direct violation of the DTS mandate and at a time when the U.S. Department of Housing and Urban Development’s (HUD) 2017 Worst Case Housing Needs report to Congress shows a resurgence in “worst case” housing needs (*i.e.*, Americans “who pay more than one-half of their income to rent, [or] live in severely inadequate conditions, or both”) to near-record levels, the Enterprises both cite a lack of recent, relevant “data and information” concerning the performance and other characteristics of manufactured housing chattel loans. The Enterprises, then, as MHARR has stressed before, effectively seek to avoid their mandatory “duty” to comply with DTS (in any market-significant manner) by citing a lack of data that flows directly from their own previous (and ongoing) failure – in violation of their respective charters -- to serve the manufactured housing market, which DTS was designed to remedy. Put differently, the GSEs, for ten years – and potentially indefinitely into the future – seek to avoid any market-significant compliance with the remedy to their failure to serve the manufactured housing market, by relying on the very failure to serve that market that DTS seeks to remedy.

This claim is not only disingenuous – as the Enterprises have had ten years since the enactment of DTS to seek and access chattel-relevant data through either *timely* FHFA-approved pilot programs of their own (which could have been devised and implemented immediately after the enactment of DTS) and/or via public sources that *do exist* (including *published shareholder reports* by Berkshire Hathaway Corporation, the corporate parent of the industry’s two largest higher-cost consumer lenders, Vanderbilt Mortgage Corporation (Vanderbilt) and 21<sup>st</sup> Mortgage Corporation (21<sup>st</sup> Mortgage) which, together, in 2016, admitted to originating 35% of all new manufactured housing loans) – but potentially has more sinister implications as well, which are only accentuated by the contents of the two final DTS plans.

As MHARR and other manufactured housing stakeholders have pointed out, the full, market-significant implementation of DTS would have two directly-related salutary effects on the manufactured housing lending market. First, it would increase the number of lenders in that market, as confirmed repeatedly by potential lenders currently waiting on the sidelines. Second, by increasing the number of lenders – making the chattel market more competitive – and by simultaneously reducing the marginal risk of loss borne by those lenders, the full implementation

of DTS by FHFA and the Enterprises would substantially increase the availability of manufactured home chattel loans, while simultaneously reducing their cost, through reductions in the higher interest rates charged by such lenders.

The actions of Vanderbilt and 21<sup>st</sup> Mortgage and their representatives, however – both in relation to DTS and other matters affecting the manufactured housing industry – appear to indicate that they do not wish to see the increase in competition and lower loan prices that would result from the full implementation of DTS, and that those lenders instead would prefer to continue to benefit from a market that currently is less than fully competitive. Even worse, the final DTS plans submitted by Fannie Mae and Freddie Mac (and other related statements by both entities) indicate that they share that goal and seek to effectively negate DTS.

First, as an objective matter, Vanderbilt and 21<sup>st</sup>, through their trade organization, the Manufactured Housing Institute (MHI), have pursued – as an organizational priority – statutory amendments to the Dodd-Frank finance reform law which would allow them to charge higher interest rates for manufactured housing loans without those loans being subjected to specific requirements applicable to “high-cost” loans. Greater market competition and lower interest rates driven by the full implementation of DTS would be wholly inconsistent with this objective and would potentially threaten the current market-dominant position of these lenders.

Second, as indicated both directly and anecdotally by multiple sources, those market-dominant lenders have failed to provide data allegedly sought by the Enterprises regarding the performance of the large number of manufactured home chattel loans that they currently hold, thus providing a ready excuse and rationale (repeatedly asserted in the final DTS plans) for the Enterprises to “slow-roll” and/or minimize the implementation of DTS to the point of irrelevance. And, indeed, every day that goes by without the full, market-significant implementation of DTS by Fannie Mae, Freddie Mac and FHFA, is a gift to Vanderbilt and 21<sup>st</sup> Mortgage, their corporate parent, Clayton Homes, Inc., its corporate parent, Berkshire Hathaway Corp., and Berkshire Hathaway scion, Warren Buffet

Third, and most importantly, it appears from multiple aspects of the Enterprises’ final DTS “implementation” plans that Fannie Mae and Freddie Mac have – and actively continue to – coordinate with these entities, as well as their affiliates and surrogates, to undermine the full and timely implementation of DTS. This activity began with an off-the-record meeting between FHFA officials and such surrogates in 2014. Following those reports, MHARR and industry trade journalists sought copies of any and all materials connected with the meeting from FHFA, which were never provided. That coordination now appears to continue in the final so-called DTS implementation plans with multiple elements that discriminate against or ignore the interests, rights and concerns of smaller industry businesses, or put Vanderbilt / 21<sup>st</sup> Mortgage / Clayton / Berkshire Hathaway / MHI companies, affiliates or surrogates in key positions to influence the implementation or character of DTS. These include, but are not limited to:

- Wholly inadequate purchases of manufactured home chattel loans through meager “pilot programs” (as detailed above);

- Denigrating the quality of all manufactured homes by designating a new “MH Select” program (developed through the involvement of a former MHI Vice President) for certain “*quality* manufactured homes” based on criteria that exceed certain HUD standards (including “back door” energy criteria promoted by an MHI affiliate, the “Systems Building Research Alliance” – SBRA);
- Fannie Mae announcing that it will become a (presumably dues-paying) “member of the Manufactured Housing Institute,” (presumably utilizing, in that case, funds subject to FHFA/federal government conservatorship);
- Fannie Mae announcing that it will create a “manufactured housing advisory council” that will include “one industry trade association” and multiple other members, but only one “smaller” manufacturer;
- Freddie Mac “partnering” with “Next Step Network, Inc.,” a beneficiary of extensive grants from Clayton and MHI to, among other things, conduct a “working group,” the “Smart MH Task Force,” comprised of lenders, retailers, housing finance agencies, trade associations and non-profit housing agencies to “*provide market intelligence and data to inform loan product needs and suggested variations to grow the market,*” but without ensuring either a balance of interests or the inclusion of small businesses or small business representatives within that “working group.”

All of these (and other) elements of the so-called “final” DTS implementation plans – an absurd ten years in the making -- will function not as ways of providing market-significant support for manufactured housing consumer loans, but as ways of maintaining the less-than-fully-competitive status quo, the market dominance and advantages of the current market-dominant lenders, and continuing the de facto exclusion of competing lenders and full-fledged free market competition. They are not means to implement DTS, but rather to ensure that it remains virtually meaningless to the market, to smaller industry businesses and, most importantly, to the vast bulk of potential purchasers of affordable manufactured homes.

Instead, at multiple crucial junctures, the Enterprises’ final DTS plans place representatives, affiliates and surrogates of the industry’s largest corporate conglomerates and its market-dominant lenders in a position to further delay and further skew to the benefit of those entities, the so-called implementation of the Duty to Serve, thereby ensuring that it will not reach market-significant proportions during the initial plan periods or – potentially – ever.

The implementation plans, accordingly, do not comply with the DTS mandate, will facilitate continued baseless discrimination against lower and moderate-income consumers, will harm the manufactured housing industry as a whole -- and its smaller businesses in particular -- and are, therefore, unacceptable.

Based on all this, the manufactured housing industry and consumers should mobilize and hold FHFA, Fannie Mae and Freddie Mac accountable before Congress for wasting the last ten years regarding DTS, and seeking congressional intervention, oversight, and – if necessary –

correction of the DTS mandate to ensure its immediate implementation on a market-significant basis. MHARR, for its part, will begin this process as a top priority for 2018.

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.

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