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

May 30, 2018

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

Re: FHFA Regulatory Review – No. 2018-N-03

Dear Mr. Pollard:

The following comments are submitted on behalf of the Manufactured Housing Association for Regulatory Reform (MHARR). MHARR is a national trade association representing the views and interests of producers of manufactured housing regulated 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 (2000 reform law). MHARR was founded in 1985. Its members include independent manufactured housing producers from all regions of the United States.

I. INTRODUCTION

On April 5, 2018, the Federal Housing Finance Agency (FHFA) published a "Notice of Regulatory Review" in the Federal Register,[1] seeking comments from interested parties pursuant to FHFA's 2012 Regulatory Review Plan (Review Plan), regarding "existing significant [FHFA] regulations to determine whether any [such] regulation should be modified, streamlined, expanded, or repealed to make the agency's regulatory program more effective or less burdensome in achieving its objectives."[2] (Emphasis added). Although the Review Plan, according to its terms, does not encompass "regulations that were adopted or substantially amended within two years prior to the issuance of a Notice of Regulatory Review," the April 5, 2018 notice nevertheless states that "members of the public may comment on recently adopted or amended regulations, and FHFA will take those comments into account as appropriate."[3]Accordingly, and in compliance

[1] See, 83 Federal Register, No. 66, April 5, 2018 at p. 14605, et seq.

[2] Id. at p. 14605, col. 3.

[3] Id. at p. 14606, col. 1.

with this express invitation, the following comments address FHFA's December 29, 2016 final rule[4] to implement the "Duty to Serve Underserved Markets" (DTS) provision of the Housing and Economic Recovery Act of 2008 (DTS Final Rule) and related DTS oversight and implementation regulatory activity by FHFA, including, but not limited to, its review and evaluation of the May 2017 DTS implementation plans submitted by the two Government Sponsored Enterprises (Enterprises).

FHFA, as an independent federal regulatory agency with statutorily-prescribed oversight authority over the Enterprises, adopted a final regulatory review plan, pursuant to Executive Order 13579[5], on February 22, 2012.[6] Pursuant to that Review Plan, periodic reviews of existing FHFA regulations may "consider" eight enumerated factors. These include two de facto "catchall" provisions -- applicable to the regulations and regulatory actions addressed herein -- which allow FHFA to review and amend and/or repeal such regulations and/or regulatory actions based on: (1) "occurrences and developments as determined by FHFA to be relevant to a review for inefficiency or unwarranted regulatory burden;" and/or (2) any "other factors as determined by FHFA to be relevant to determining and evaluating the need for and effectiveness of a particular regulation."

In accordance with this FHFA regulatory review plan, and for the reasons set forth in greater detail below, MHARR maintains and asserts that the December 29, 2016 FHFA final DTS implementation rule – codified within FHFA's regulations as 12 C.F.R. Part 1282, Subpart C – and FHFA evaluation of the DTS implementation plans already submitted[7] and to be submitted in the future by the Enterprises and related FHFA DTS "Evaluation Guidance," should be substantially amended to affirmatively require market-significant purchases of manufactured housing personal property (i.e., chattel) loans and to ensure full and fair competition within the manufactured housing consumer financing market in order to: (1) fully comply with both the letter and intent of HERA section 1129;[8] and (2) to render those regulations (and implementation plans) effective (and therefore, simultaneously "more effective") – which they currently are not – in implementing and fulfilling the statutory mandate of DTS with respect to federally-regulated manufactured housing.

In support of these comments, MHARR hereby incorporates by reference herein, as if restated in full, its March 15, 2016 written comments on FHFA's December 18, 2015 proposed DTS implementation rule,[9]and its July 10, 2017 written comments on FHFA's DTS Implementation Plan Evaluation Guidance.[10]

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[4] See, 81 Federal Register, No. 250 at p. 96242, et seq.

[5] See, Executive Order 13579 ("Regulation and Independent Regulatory Agencies") July 11, 2011.

[6] See, 77 Federal Register, No. 35 at 10351, et seq., "Regulation and Independent Regulatory Agencies."

[7] I.e., As part of any order revising the regulations and/or Evaluation Guidance upon which the Enterprise DTS implementation plans received previous "non-objection" determinations from FHFA, FHFA should direct the Enterprises to submit forthwith amended DTS implementation plans based upon such revised regulations and Guidance.

[8] See, 12 U.S.C. 4565.

[9] See, Attachment 1, hereto.

[10] See, Attachment 2, hereto.

II. BACKGROUND

A. THE DUTY TO SERVE MANDATE

The DTS mandate, as set forth in HERA, represents both: (1) a congressional finding that the Enterprises (and by extension FHFA) have not -- and still do not -- properly serve the manufactured housing market and manufactured housing consumers, despite their existing Charter obligations to support homeownership opportunities for very low, low and moderate-income Americans; and (2) a remedy for that specific failure, designed to materially[11] 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 in the unique context of manufactured housing 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."[12](Emphasis added). (See, 12 U.S.C. 4565(d)(3)).

This express authorization and policy directive by Congress to incorporate securitization and secondary market support for manufactured home chattel loans as part of DTS, is (and continues to be) the single most significant aspect of DTS with respect to the manufactured housing market, for the simple reason that, according to the most recent data compiled by the U.S. Census Bureau, at least 80% of manufactured housing placements utilize chattel financing. Chattel placements, moreover, represent an expanding segment of the overall manufactured housing market according to the same data, having increased from 64% of all manufactured housing placements in 2007, to 80% of all placements by 2015 – a 25% increase.[13] Quite simply, then, as MHARR has pointed out previously in FHFA rulemaking dockets pertaining to DTS and its implementation, a DTS implementation rule (and corresponding DTS Evaluation Guidance and implementation plans) that effectively leave 80% or more[14] of the congressionally-designated DTS remedy market unserved (or virtually unserved) for a further indefinite period, with ten years having already elapsed since the enactment of DTS, cannot possibly comply with the statutory DTS mandate and, therefore, per se, cannot be "effective" (based on any meaningful or rational construction of that term) in implementing the statutory DTS mandate.

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[11] MHARR has consistently characterized the level of secondary market and securitization support demanded by Congress through the DTS mandate as "market-significant" support – i.e., a level of support and involvement sufficient to expand the availability of manufactured home consumer financing and, simultaneously, manufactured home sales and production, to a significant degree.

[12] I.e., So-called "chattel" loans secured by an interest in the home itself and not any underlying real property.

[13] See, U.S. Census Bureau, Cost and Size Comparison: New Manufactured Homes and Single-Family Site-Built Homes (2007-2015).

[14] Given the steadily increasing share of chattel placements during the last Census Bureau sampling period (2007-2015), it is highly likely that chattel placements at present – some four years after the close of the last sampling period – represent more than 80% of the overall manufactured housing market.

B. THE FINAL DTS RULE AND ENTERPRISE "IMPLEMENTATION" PLANS

Despite this express statutory authorization, and the obviously crucial role of chattel lending within the manufactured housing market, the final DTS implementation rule adopted by FHFA contains no provision whatsoever for the mandatory support of manufactured home consumer chattel loans by the Enterprises, and the final DTS implementation plans developed by the Enterprises -- and approved by FHFA -- provide no market-significant support (and indeed, virtually no support whatsoever) for manufactured home chattel loans during their respective three-year periods (i.e., 2018-2020). This reflects – and is entirely consistent with – the complete refusal of both the Enterprises and FHFA to recognize and acknowledge that with DTS, Congress established an unequivocal policy directing them not only to remedy their past failure to serve the manufactured housing market, but to do so in a way that necessarily ameliorates the harsh and discriminatory restrictions – imposed under other more general statutes and policies – that were abused for decades as an excuse for the Enterprises' near-total failure to provide securitization and secondary market support for the manufactured housing market. It is that failure which led Congress to specifically identify manufactured housing within DTS/HERA as a historically "underserved" market. Moreover, it is that failure – and the necessity of ameliorating those restrictions on serving the manufactured housing market -- which led Congress to specifically direct the GSEs and FHFA to "develop loan products" with "flexible underwriting guidelines," to facilitate a secondary market for manufactured housing loans.

Without significantly ameliorating, conditioning and modifying those restrictions, as expected and directed by Congress, the Enterprises and FHFA will never accomplish the goals and objectives of DTS with respect to manufactured housing by materially advancing the availability of manufactured housing as a prime affordable, non-subsidized housing resource for American families. Yet, neither the 2016 Final Rule published by FHFA – nor the Enterprises' DTS implementation plans – reflect any specific amelioration of those discriminatory restrictions whatsoever, and instead presume the continuing applicability of those restrictions as a pretext for endless rounds of "outreach," "engagement," "communication feedback loops," "conferences," "roundtables," "discussions," and other data collection, research and analysis, all for the ostensible purpose of complying with those restrictions, before seeking FHFA approval to purchase even one manufactured housing chattel loan. This continuing adherence to discriminatory restrictions is a clear prescription for either no progress whatsoever for manufactured homebuyers – or insignificant "progress" at a glacial pace – that makes a mockery of DTS and Congress.

Indeed, given the Enterprises' history of staunch resistance – and outright hostility – to serving the manufactured housing market and to designing, structuring and establishing securitization and secondary market support programs for manufactured housing and the mostly lower and-moderate-income American families that it serves, FHFA leadership on DTS is all the more conspicuous by its absence. For three decades the Enterprises have paid lip service to – and toyed with -- the industry and its consumers, attending meetings and conferences, visiting factories and other industry facilities, and empaneling task forces and outreach groups, as a subterfuge, as is demonstrated by the absence of any tangible change in policy, or positive market results, over that extended period. Now, though, with a clear congressional directive to compel the Enterprises to properly serve the manufactured housing market and credit-worthy consumers who fall squarely within their statutory and Charter mission to promote homeownership, FHFA: (1) has adopted a

final DTS "implementation" rule which provides the Enterprises with the discretion and maneuvering room that they need to continue paying lip service to -- and toy with -- the manufactured housing market without accomplishing anything of substance; and (2) has approved so-called DTS "implementation" plans that are a prescription for inaction at best and, at worst, for involvement with vested special interests – to the detriment of consumers and the broader industry.

The FHFA 2016 DTS Final Rule and the DTS implementation plans flowing from that rule, consequently, represent a failure to comply with the will and express directive of Congress that, by definition will not – and cannot – be "effective" in achieving the clear and unequivocal purposes of DTS. Accordingly, both the DTS final rule and Enterprise DTS implementation plans should be amended as described herein.

III. COMMENTS

A. THE DTS FINAL RULE AND DTS "IMPLEMENTATION" PLANS ARE NOT AND CANNOT BE "EFFECTIVE" IN THEIR PRESENT FORM

1. FHFA'S FINAL "IMPLEMENTATION" RULE FAILS TO PROPERLY OR EFFECTIVELY IMPLEMENT DTS

FHFA's fatally deficient 2016 DTS final rule – as MHARR anticipated and predicted at the time – has ensured the submission (and FHFA approval) of equally flawed and market-ineffective DTS "implementation" plans by the Enterprises.

DTS, as MHARR has frequently stressed, is manifestly remedial legislation designed to correct and reverse the Enterprises' long-standing failure and/or refusal to serve the manufactured housing market and the other statutorily-identified markets. As such, established canons of statutory construction and judicial precedents hold that it is to be construed in a "broad and liberal" manner in order to achieve its legislative purposes. But that is not – and has not -- been the case with DTS through the entire FHFA administrative proceeding, including both the 2010 and 2015 proposed rules, and the 2016 Final Rule.

As a remedial statute with a mandatory directive, DTS is not a congressional invitation for stasis, for maintaining the fundamental status quo for one or more decades, or indefinitely. It is instead, a mandatory directive to change and correct the status quo ante in a material fashion and in a timely way to provide a meaningful remedy for those who have been – and are being -- underserved in a way that is fundamentally discriminatory and Congress has determined and legislated, must end.

Judged against this benchmark, FHFA failed when it promulgated its permissive 2016 final DTS rule, which does not require specific securitization or secondary market support by the Enterprises for manufactured housing loans in general – and manufactured housing chattel loans in particular. That rule, in its present form – which fails itself to comport with the specific congressional goals and objectives of DTS – effectively guaranteed that the ensuing DTS implementation plans produced by the Enterprises pursuant to that rule would fail to provide any

market-significant or meaningful support for such loans during their three-year coverage period (or, indeed, subsequent periods) – and that, in fact, is the case. And, given the primary mission of the Enterprises, the key outstanding question is why FHFA, as the Enterprises' regulator, would give "cover" to their failure to comply with Congress' mandate.

First and most significantly, as MHARR emphasized in its March 15, 2016 DTS final rule written comments, consumers in need of immediate access to affordable housing and the inherently affordable non-subsidized home ownership that manufactured housing provides – as recognized by Congress through DTS and pre-existing federal manufactured housing law[15] -- have effectively been denied a DTS remedy of any kind for a decade already. Over that time, no specific, quantifiable progress was made – at all – in meeting Congress' directive. As is shown by the 2016 final rule, by FHFA's January 13, 2017 Evaluation Guidance document and by FHFA's subsequent Request for Information (RFI), the collection and analysis of information that could have been done years ago, was needlessly delayed, with years more of delays slated to follow, before any meaningful relief for consumers, if any, will even be possible.[16]

Second, the language of DTS makes it abundantly clear that it is designed to change the unacceptable status quo by bringing about new products and new programs to serve consumers within the identified markets, and not just re-packaging or re-branding existing products or existing programs. Specifically, the first manufactured housing section of DTS (12 U.S.C. 4565 (a)(1)(A)) states that the Enterprises "shall develop loan products" for designated manufactured housing consumers. The directive to "develop" loan products for manufactured housing would not have been necessary if the Enterprises already had adequate "loan products" for the manufactured housing market, and clearly demonstrates that Congress' objective – and mandate – was to have the Enterprises (given their history) establish new loan products that would properly serve those consumers.

Even accepting that one of the Enterprises has, in the past, provided highly-limited securitization and secondary market support for manufactured housing real estate loans, which Congress is presumed to know, the new Enterprise products to be developed under DTS must necessarily be for manufactured housing chattel loans. Viewed this way, as a "broad and liberal" construction of a remedial statute such as DTS would demand, the proviso regarding manufactured housing chattel loans set forth in 12 U.S.C. 4565 (d)(3) is not permissive, but rather an adjunct to -- and clarification of -- the mandatory "duty" established by DTS.

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[15] See, e.g., Section 602 of the Manufactured Housing Improvement Act of 2000: "Congress finds that – (1) manufactured housing plays a vital role in meeting the housing needs of the nation; and (2) manufactured homes provide a significant resource for affordable homeownership and rental housing accessible to all Americans." (42 U.S.C. 5401(a).

[16] Nor is any of this altered by the FHFA conservatorship of the Enterprises dating to 2008. Indeed, with the Enterprises under the de facto and de jure control of a federal government agency, such as FHFA, the failure to comply with a specific statutory directive is more egregious, not less. Consumers who have been denied a remedy to a congressionally-identified and discriminatory failure to serve by the Enterprises cannot and should not be denied that remedy for years more pending study, evaluation and supposed "outreach" with no guarantee of any concrete, remedial, market-significant results for more years to come.

The implementation of DTS, however, established by the FHFA final rule and related Evaluation Guidance fails to mandate any securitization or secondary market support for any type of manufactured housing loan, either real estate or chattel.[17] This permissive formulation fundamentally fails the directive of Congress, as do the Enterprises' DTS implementation plans produced pursuant to that rule and related FHFA guidance. If Congress had intended the "duty" to serve to be optional, it would not have called it a "duty," which involves, entails and expresses a mandatory obligation. Nor did Congress call DTS the "Duty to Study." Studying a failure to serve already identified and targeted for rectification by Congress, is an excuse for inaction and preservation of the unacceptable status quo, not an assured predicate for a remedy already prescribed by statute.

In addition to unacceptable delay and the failure to mandate any type of concrete remedy that would actually benefit the consumers identified by DTS, the 2016 final rule and Evaluation Guidance – and now the DTS implementation plans produced by the Enterprises pursuant to those documents -- would leave upwards of 80% of the manufactured housing market represented by chattel placements unserved either indefinitely or – potentially – forever. The 80% of the manufactured housing market represented by such chattel placements, moreover, involve the industry's most affordable homes – specifically the types of homes that would be most affordable for the very low, low and moderate-income homebuyers targeted by DTS for financing relief, the very same homebuyers that the Enterprises were created (and exist) to serve. Very simply, a DTS implementation rule – and proposed implementation plans -- that would leave 80% or more of the congressionally-designated DTS remedy market unserved indefinitely, is not – and cannot – be "effective" in implementing the DTS mandate.

The FHFA final rule -- as MHARR noted in calling for its withdrawal and substantial modification – and, subsequently, the DTS implementation plans produced by the Enterprises pursuant to that rule, thus represent a continuation of the unacceptable situation that Congress sought to remedy via DTS. This entails material harm for the very consumers that Congress targeted for relief under DTS. Among other things, many of those consumers are – and will continue to be -- needlessly excluded from the manufactured housing market and from home ownership altogether because of the lack of Enterprise securitization and secondary market support for manufactured housing chattel loans. The failure to implement DTS via mandatory, market-significant securitization and secondary market support for manufactured home chattel loans also effectively forces consumers that are not altogether excluded from the market, into higher-cost loans that benefit only a small number of industry-dominant finance companies. (I.e., the same companies holding the manufactured housing loan performance data, the lack of which the Enterprises continue to use as an excuse for failing to implement DTS for HUD Code chattel loans after more than a decade). This translates into higher monthly payments, which require higher incomes to qualify for financing. (While higher-cost loans may be necessary for less-qualified or higher-risk borrowers, they have instead become the norm for the manufactured housing market due to the Enterprises' failure to provide securitization and secondary market support for such loans). It also means artificially restricted competition within the manufactured housing finance

[17]As set forth in FHFA's final DTS implementation rule, 12 C.F.R. 1282.33, regarding the manufactured housing market, merely refers to loans on manufactured homes "titled as real property or personal property," as being "eligible to receive duty to serve credit under the manufactured housing market." (See, 12 C.F.R. 1282.33(b), (c)).

market, which limits consumer choice and consumer financing options, and also underlies higher than necessary interest rates for such chattel loans.

2. DTS IMPLEMENTATION PLANS BASED ON FHFA's FINAL RULE AND EVALUATION GUIDANCE DO NOT AND CANNOT "EFFECTIVELY" IMPLEMENT DTS

The final so-called DTS "implementation" plan developed by Freddie Mac and approved by FHFA pursuant to its final DTS implementation rule and Evaluation Guidance, does not and cannot "effectively" implement DTS in a timely and market-significant manner. That plan, which is long on excuses and rationalizations for its near-total inaction (a decade after the enactment of DTS), would provide, at most, for a conditional, token chattel financing "pilot" program for manufactured housing in the "out" years of the three-year plan, "if approval is obtained" beforehand from FHFA,[18]which is not assured. (Emphasis added). In relevant part, Freddie Mac's DTS plan states: "Freddie Mac does not currently purchase chattel loans. We do not have the requisite systems in place to purchase chattel loans, nor do we have historical data on chattel loan performance that would allow us to make determinations about whether the purchases of these loans can be made in a safe and sound manner. *** Freddie Mac intends to conduct a systematic and incremental review to develop a product before entering the chattel market."[19]If, then, and presumably only-if such information and approvals are obtained, Freddie Mac apparently plans to purchase "200-500" manufactured home chattel loans in year-two of its plan (2019) "to help inform future product design to build out capabilities for flow path," and another "600-1,500" chattel loans in plan-year three (2020), for the same ostensible purpose.[20]

Meanwhile, Fannie Mae, in its final FHFA-approved DTS "implementation" plan, conditions its own, "out-year" DTS chattel pilot program not only on the development of additional chattel loan market and performance information after ten years of unexplained delay, but also on "FHFA approval to develop a chattel pilot ... and internal approval to purchase chattel loans."[21]Consequently, the Fannie Mae "pilot" chattel program is subject to at least three conditions precedent – i.e.: (1) development of "sufficient" chattel loan performance information, the sufficiency of which is not defined or described in the plan itself and is, therefore, totally subjective and arbitrary; (2) FHFA approval; and (3) "internal" Fannie Mae" approval, based on unstated and undefined criteria and considerations – which may never be satisfied, and at least two of which rest within the exclusive, subjective and potentially arbitrary control of Fannie Mae. If – and only if – these and other conditions precedent are met, Fannie Mae's DTS implementation plan indicates that it will purchase 1,000 manufactured housing chattel loans in plan-year two (2019) and another 1,000 chattel loans in plan-year three (2020).

To place these meager chattel loan "pilot" programs in proper perspective, with 92,902 HUD Code manufactured homes produced 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

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[18]See, Freddie Mac Final DTS Implementation Plan at p. MH25.

[19]Id. at p. MH21.

[20]Id. at p. MH25.

[21]See, Fannie Mae Final DTS Implementation Plan at p. MH30.

of approximately 279,000 HUD Code manufactured homes, with approximately 223,000 (i.e., 80%) of those homes financed through chattel loans, again, assuming no change in the composition or economic characteristics of the overall market.

Against this baseline, the chattel loan programs envisioned by Fannie Mae and Freddie Mac combined – even at maximum projected capacity -- would serve 4,000 purchasers, or a mere 1.43% of the entire manufactured housing market through 2020 (or 1.79% of all projected manufactured home consumer chattel loans) – more than a decade after the enactment of DTS. Chattel loan purchases at these levels, 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 the Enterprises to serve the manufactured housing market contrary to law; (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; which (5) continues to force low and moderate-income manufactured homebuyers into the arms of the industry-dominant lenders and their higher-cost loans, exactly the opposite of the relief that Congress clearly wanted to provide. Indeed, this type of alleged "implementation" of DTS not only does not help the industry and its consumers, but arguably makes matters worse – and the question is "why?"

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, again, a lack of recent, relevant "data and information" concerning the performance and other characteristics of manufactured housing chattel loans – data that is held by the same companies that provide such higher-cost loans and stand to benefit the most from the de facto non-implementation of DTS.

The Enterprises, then, as MHARR has stressed before, effectively seek to avoid their mandatory "duty" to comply with DTS (in a 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 for their failure to serve the manufactured housing market, by relying on the very failure to serve that market which DTS seeks to remedy.

Based on the failure of the Enterprises' DTS "implementation" plans to provide for specific, market-significant securitization and secondary market support for manufactured housing loans on an expedited, going basis, those plan fail to "effectively" implement DTS and represent conclusive evidence of the failure of both the FHFA final DTS "implementation" rule and DTS Evaluation Guidance to "effectively" implement the statutory DTS mandate.

Moreover, while both Freddie Mac and Fannie Mae bemoan the "lack of historical data on chattel loan performance,"[22] and pay endless homage to the need for guarantees of "safety" in entering a field that would expand the availability of affordable, non-subsidized homeownership for millions of credit-worthy moderate and lower-income Americans, they (and FHFA) ignore an essential point. Specifically, there is no "policy" decision for either the GSEs or FHFA to make. Congress, through DTS, made that policy decision for them – i.e., that the Enterprises have a mandatory, statutory duty to provide a remedy for consumers they have previously underserved within the manufactured housing market, to provide "new"[23] products for the securitization of such loans, with "flexible" underwriting guidelines, and creation of a secondary market for such loans in a way that will remedy the failure to adequately serve that market, as identified by Congress. Thus, contrary to FHFA's 2016 DTS final rule, the "duty" to serve all segments of the manufactured housing market is in fact, mandatory and not discretionary, and any failure to establish such "new" products as directed by Congress represents a violation of DTS/HERA.

Moreover, despite continuing efforts by the Enterprises to disparage manufactured housing loans and manufactured housing borrowers, manufactured housing played no part whatsoever in the 2008 credit crisis that ultimately led to the Enterprises' conservatorship. For years prior to the failure of the Enterprises, manufactured housing obligations constituted a miniscule portion of the Enterprises' total business. The performance of manufactured housing loans -- at less than one percent of the Enterprises' portfolios -- was not responsible for the Enterprises' failure, was not a significant factor in their failure and, because of the relatively small size of the manufactured housing market as compared with other segments of the housing industry, would not impair the successful rehabilitation of the Enterprises (or the future transfer of their functions) even if the Enterprises purchased or guaranteed every manufactured home loan for the indefinite future.

The failure of the Enterprises in 2008 was manifestly a consequence of their massive participation in the extremely risky and exponentially larger sub-prime finance market for site-built homes and other risky real estate mortgage products, including adjustable-rate mortgages, low or no-down-payment loans and interest-only loans, among others. For the Enterprises, which built their business around that market for years, ignoring its inherent risks and providing market support for well-heeled borrowers, while deriving tax and other government benefits for supposedly serving low, lower and moderate-income borrowers, to now claim (or for FHFA to claim) that they would somehow be harmed by the performance of a comparatively small number of lower-cost manufactured housing chattel loans, is disingenuous and destructive of the true function and mission of the Enterprises.

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[22] See, e.g., Fannie Mae Proposed DTS Implementation Plan (May 8, 2017) at p. 37.

[23] Despite Congress' directive to the GSEs to develop "new" loan products for manufactured housing, Fannie Mae, in its May 8, 2017 Proposed DTS Implementation Plan, seeks to resurrect its decidedly not-new "MH Select" program. Rolled-out to great fanfare in 2008, MH Select was a resounding failure, generating virtually no activity while it mandated features and amenities for manufactured homes sited and financed as real estate which undermined their fundamental affordability -- all as acknowledged by Fannie Mae in its "final" DTS "implementation" plan: "Previously, Fannie Mae introduced a product for the financing of quality manufactured housing loans, MH Select, which had no deliveries in its last three years of availability, i.e., 2010-2012." (See, Fannie Mae Final DTS Implementation Plan at p. MH25. (Emphasis added).

Put differently, for the Enterprises, that spent years putting people into homes they could not afford -- leading to their own collapse -- to now balk at helping people buy manufactured homes that they can afford, based on alleged "risk," is disingenuous, absurd, unacceptable and inexcusable. Manufactured home loans -- of all types -- which pair purchasers with modern (i.e., post-2000 reform law) manufactured homes that they can afford, rather than employing gimmicks to paper over insufficient resources, when managed properly, are no more risky than any other home loan and are far less risky than the loans which landed the Enterprises in conservatorship. As the "Application of the Duty to Serve Underserved Markets" White Paper included with MHARR's 2010 NPRM comments emphasizes, these products, including real estate, land-home and chattel transactions, represent "successful lending models that [have] served the industry well and produced profitability for the lenders." Consequently, if serving the manufactured housing market as Congress intended requires the Enterprises to develop new "operational capacities" and "risk management processes not currently in place," then those capacities should be developed and put in place, instead of emasculating DTS.

Indeed, the continuing overt hostility of FHFA and the Enterprises toward manufactured home chattel loans – and the lower to moderate-income home buyers who rely on those loans in particular – stands in sharp contrast with FHFA's rush in late-2014 to significantly relax underwriting standards for Enterprise-supported loans in the site-built sector. As part of those revised standards, first-time home owners became eligible for Enterprise-supported home loans with down-payments as low as 3% and FICO scores as low as 620 (at Fannie Mae).[24] Thus, while the Enterprises (encouraged and authorized by FHFA) have lost no time in reverting to the type of risky practices that led to their insolvency and conservatorship in the first place – for the benefit of wealthier, credit-laden purchasers of much more costly site-built homes (with an average sales price of $360,600 in 2015),[25] FHFA still, at best, would severely restrict and constrain any DTS support for 80% of new manufactured home buyers taking out much smaller loans on homes that they can actually afford; who have a much greater need for Enterprise secondary market and securitization support; and who, as a result of continuing non-support, will either be excluded from home ownership altogether, or are (and will be) forced to pay unnecessarily high interest rates for access to any type of financing.

Based on the foregoing, therefore, the Enterprises' DTS Implementation Plans do not even come close to satisfying the mandate of DTS. As MHARR stated at the February 8, 2017 FHFA-DTS "listening session:" "[A] limited manufactured housing chattel loan 'pilot program' of the type authorized by the DTS final rule and Evaluation Guidance ... would be 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." This stands in sharp contrast with MHARR's call "for a series of Enterprise-securitized chattel loans in volume, 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 ... [that] would make affordable homeownership immediately available to millions of Americans," while allowing the Enterprises

[24] See, "Fannie Moves Aggressively on New Low-Down-Payment Loans," National Mortgage News (December 8, 2014).

[25] See, U.S. Census Bureau Cost and Size Comparison (2007-2015).

(and FHFA) to carefully monitor the performance of each batch of loans and thereby maintain full control over the process

Indeed, many will be left to wonder whether the FHFA final rule and these wholly deficient plans are actually designed to maintain the unacceptable status quo – a highly-distorted and less than fully-competitive manufactured housing consumer finance market dominated, in part, by the finance arm of the industry's largest manufacturer, where consumers pay higher-cost interest rates because of the absence of securitization and secondary market support for those loans and the enhanced competition that such support would produce.

IV. CONCLUSION

A permissive DTS approach to manufactured housing chattel loan support as outlined in the 2016 DTS final rule, the 2017 Duty to Serve Evaluation Guidance, and the Enterprises' DTS Implementation Plans, is not the answer for American consumers in need of affordable housing opportunities now. Consumers have already waited a full decade since the enactment of DTS and cannot afford to wait years or decades longer for results based on study, "outreach" and other substitutes for the actual market-significant support of manufactured housing chattel loans.

For all of the foregoing reasons, therefore: (1) the DTS final rule published by FHFA on December 29, 2016 – in order to render it "effective" in implementing the statutory DTS mandate -- should be amended to require mandatory, market-significant securitization and secondary market support for both real estate and chattel manufactured housing loans within the first year of the Enterprises' DTS implementation plans, and increased levels of such support each year thereafter; (2) FHFA, pursuant to such a modification of the DTS final rule, should forthwith amend its DTS Evaluation Guidance to conform with those amendments; and (3) FHFA, pursuant to those amendments, should direct the Enterprises' to withdraw, amend, and re-submit their final DTS implementation plans to include provisions for full compliance with that mandate in each year of each such amended plan.

Without these changes, the statutory DTS mandate will not –and cannot – be "effectively" implemented as designed by Congress.

Sincerely,

Mark Weiss
President and CEO

cc: Hon. Michael Crapo
Hon. Sherrod Brown
Hon. Jeb Hensarling
Hon. Maxine Waters
Hon. Mick Mulvaney (CFPB)
Hon. Neomi Rao (OIRA)
HUD Code Manufactured Housing Industry Members