

Comments of the
National Consumer Law Center
(on behalf of its low-income clients)
and
Manufactured Home Owners Association of America

Regarding
Notice of Proposed Rulemaking
Enterprise Duty to Serve Underserved Markets

Federal Housing Finance Agency
12 C.F.R. Part 1282
RIN 2590-AA27

July 22, 2010

The National Consumer Law Center (NCLC)¹ and **Manufactured Home Owners Association of America (MHOAA)**² submit these comments in response to the Federal Housing Finance Agency's (FHFA) proposed rule regarding the Government Sponsored Enterprises' ("Enterprises") duty to serve the manufactured housing market.

We commend the FHFA for recognizing the importance of the manufactured housing market. The Enterprises play an important and influential role in the secondary market. Therefore, they have the potential to substantially improve financing opportunities for thousands of very low-, low-, and moderate-income families buying manufactured homes.³ We also

¹ The **National Consumer Law Center**, Inc. (NCLC), a non-profit Massachusetts corporation founded in 1969, specializes in low-income consumer issues. The NCLC provides legal and technical consultation on consumer law issues to help legal services, government, and private attorneys who represent low-income consumers across the country. The NCLC publishes a series of seventeen practice treatises and annual supplements on consumer laws, as well as bimonthly newsletters, on topics relating to mortgage lending, personal property lending, repossession, and foreclosure. NCLC attorneys advocate extensively on behalf of low-income individuals facing consumer law issues and also conduct training for thousands of legal services and private attorneys, mortgage counselors, and public policymakers on strategies to deal with the mortgage foreclosure crisis and other problems affecting consumers across the country. Through its work on manufactured housing issues, the NCLC has now also become the leading consumer advocate promoting legal protections for owners of manufactured homes. Each year, NCLC attorneys provide extensive oral and written testimony on these topics to numerous Congressional committees and subcommittees. Carolyn Carter, Ana Lucía Hurtado, Andrew Pizor, and John W. Van Alst wrote these comments.

² **Manufactured Home Owners Association of America**, Inc. (MHOAA), a national organization comprised of manufactured home-owners and renters, promotes and represents the rights and interests of manufactured home-owners across the country. MHOAA supports the enactment of legislation aimed at improving the quality of life of manufactured home-owners, including those who live in manufactured home communities as well as those who own the land underneath their homes. MHOAA also monitors federal and state-level agencies to ensure that existing and proposed regulations protect the rights and interests of manufactured home-owners and their communities.

³ See WILLIAM APGAR ET AL., JOINT CTR. FOR HOUSING STUDIES OF HARVARD UNIV., AN EXAMINATION OF MANUFACTURED HOUSING AS A COMMUNITY- AND ASSET-BUILDING STRATEGY 1 (2002), *available at* http://www.jchs.harvard.edu/publications/communitydevelopment/W02-11_apgar_et_al.pdf (stating that the 8 million manufactured homes across the country comprise approximately two-thirds of all affordable housing added to the housing stock, which should "send a message to all who seek to promote home ownership for low-income families, as well as promote safe, affordable housing opportunities [for] disenfranchised communities"); *see also*

applaud the FHFA for formulating its proposed rule grounded on a full awareness of the dangers presented by chattel lending.

Despite its strengths, the proposed rule can and should be improved. Specifically, we recommend giving the Enterprises duty-to-serve (DTS) credit for:

1. Providing assistance in the financing of resident-owned manufactured housing communities; and
2. Purchasing manufactured home loans which meet the standards delineated below.

LENDING ON MANUFACTURED HOME COMMUNITIES

Manufactured homes are typically placed on either land owned by the homeowner or on leased land. Homes on leased land are most often in manufactured home communities. The manufactured-home owners residing in these communities own their home but rent the lot or pad upon which their individual home sits. As previously discussed in earlier comments, many jurisdictions provide only very limited protections for homeowners in these communities.

There are two types of manufactured housing communities that would typically seek community financing: investor-owned and resident-owned communities. Homeowners in investor-owned communities pay rent to the park owner or landlord. By contrast, homeowners in resident-owned communities are members of the cooperative that owns the community's land collectively. While the homeowners pay rent to the cooperative to pay off the loan for the community, maintain and repair the infrastructure, and pay the property taxes on the land, the residents have gained control and make all decisions affecting the community collectively, including setting rent, managing the community, and setting community rules.

For the reasons discussed below, investor-owned and resident-owned communities should receive different treatment under the FHFA's final duty-to-serve rule. While the Enterprises should receive credit for loans that enable *community residents* to collectively buy or refinance their own community, there should be no duty-to-serve credit for investors purchasing manufactured home communities.

I. The Enterprises Should Receive Duty-to-Serve Credit for Assisting in the Financing of Resident-Owned Communities but Not of Investor-Owned Communities.

A. The Problem: Investor-owned communities create numerous social and economic dangers for their residents and surrounding communities.

Most manufactured housing community residents live in investor-owned communities.⁴ Unfortunately, the 3.5 million Americans living in one of these communities⁵ face numerous

Sean West, Federal Reserve Bank of San Francisco, *Manufactured Housing Finance and the Secondary Market*, COMMUNITY DEV. INV. REV. 35 (2009) (“[M]anufactured housing is a key resource when it comes to providing home-ownership opportunities for low-and moderate-income families . . .”).

⁴ INNOVATIONS IN MANUFACTURED HOMES (I'M HOME), MANUFACTURED HOUSING RESOURCE GUIDE, PROMOTING RESIDENT OWNERSHIP OF COMMUNITIES 8 (July 2009), available at http://www.consumerlaw.org/issues/mobile_homes/content/CFED-purchase_guide.pdf (stating that about 34 percent of all existing manufactured homes sit on one of these manufactured housing communities).

challenges to their equity-building dreams.⁶ A recent report described how investor-owned communities create problems for their residents and community at-large:

The [investor] landowners may impose undue community rules, controls over utilities and services, or unscheduled rent increases, and homeowners forced to leave the community must move the home or abandon it, including any accrued equity. Homeowners who place their homes in manufactured home communities are at risk of losing their homes due to wide scale closure of these communities. Between May 2005 and May 2007, 18 states witnessed the closure of at least one manufactured home community, displacing thousands of home owners. Some states have been severely affected. More than 83 communities in Florida have closed, and experts estimate that approximately 1500 more Florida communities are at risk of closing. In Washington, more than 50 communities are at risk of closing as of October 2008, which could displace more than 2000 households.⁷

Investor-owned communities leave their residents vulnerable to arbitrary rent increases, displacement through such increases, unfavorably-changing community policies, no-cause evictions, and park closures.⁸ This vulnerability not only harms those residents who lose their home when a community closes or the rent is increased unreasonably, but also negatively impacts all residents of investor-owned communities as the risk of these events reduces the value of the home to both the current resident and prospective purchasers.

B. The Solution: Resident-owned communities eliminate or substantially ameliorate the dangers posed by investor-owned communities to both residents and lenders.

Resident-owned manufactured housing communities eliminate the problems associated with investor-owned communities. The Carsey Institute at the University of New Hampshire conducted an empirical evaluation of the outcomes experienced by resident-owned communities in New Hampshire and found that resident ownership stabilizes residents' lot rents, improves park infrastructure, and enables residents to obtain purchase financing more easily. In turn, all of these:

- (1) elevate resident and community health,
- (2) improve community security (which can no longer be sold out from under the residents without the cooperative's consent),
- (3) preserve affordable housing in the area,
- (4) increase access to mortgage-competitive financing,
- (5) enhance residents' subjective sense of control over their homes and communities, and
- (6) increase the resale value of residents' homes.⁹

⁵ INNOVATIONS IN MANUFACTURED HOMES (I'M HOME), MANUFACTURED HOUSING RESOURCE GUIDE, PROMOTING RESIDENT OWNERSHIP OF COMMUNITIES 8 (July 2009), *available at* http://www.consumerlaw.org/issues/mobile_homes/content/CFED-purchase_guide.pdf (stating that about 34 percent of all existing manufactured homes sit on one of these manufactured housing communities and estimating that there are between 50,000 and 60,000 investor-owned communities nationwide).

⁶ Paul Bradley, *Promoting Economic Security for Manufactured Homes and Parks: New Hampshire's Pioneering Cooperative Model*, 7 HOUSING FACTS & FINDINGS (2005).

⁷ Innovations in Manufactured Homes (I'M HOME), Manufactured Housing Resource Guide, Promoting Resident Ownership of Communities 8 (July 2009), *available at* http://www.consumerlaw.org/issues/mobile_homes/content/CFED-purchase_guide.pdf.

⁸ *Id.*

⁹ SALLY WARD ET AL., AFFORDABLE HOUSING AND ASSET DEVELOPMENT: THE ROLE OF LAND OWNERSHIP IN MOBILE HOME PARKS 3, 14 (2006) (studying a sample of 600 residents in New Hampshire mobile home parks); *see also* SALLY WARD ET AL., CARSEY INSTITUTE AT THE UNIV. OF NEW HAMPSHIRE, RESIDENT OWNERSHIP IN NEW

Some resident-owned communities that pay off their mortgages may even be able to pay dividends to its resident members “from the extra income to the community, beyond operating expenses or lower rent payments.”¹⁰ Furthermore, by their very nature, cooperatives increase civic engagement and reduce conflict between community residents.¹¹ Lastly, anecdotal evidence suggests that manufactured homes in resident-owned communities enjoy faster appreciation than those in investor-owned communities.¹²

In the long run, resident ownership yields several other benefits for its residents. One study found that after five years of ownership, homeowners in resident-owned communities:

- (1) paid \$40 less each month,
- (2) enjoyed a 12% price-per-square-foot margin over homes in investor-owned communities that were sold within the last year,
- (3) experienced substantially more protection from park closures and change-of-use evictions, and
- (4) had properly-maintained (and often-improved) water, septic, and road systems because the resident-owned communities used revenues locally rather than exporting them as profits, like the investor-owned communities’ absentee landlords.¹³

Importantly, resident ownership of manufactured housing communities also benefits lenders, as it allays many lender security concerns and reduces risk to investors. The benefits and security offered by resident-owned communities to both homeowners and lenders make them more desirable to homeowners, lenders, and the secondary mortgage market. New Hampshire’s experience demonstrates how resident-owned communities amount to good investments for lenders. In New Hampshire, over 90 resident-owned communities obtained financing to purchase their communities’ lands, and so far, there have been no foreclosures or failed communities. Given that lending to resident-owned communities carries a very low risk of default, the FHFA’s final rule should promote the Enterprises’ involvement in the conversion of investor-owned communities to resident ownership by giving the Enterprises DTS credit for assisting in the financing of resident-owned manufactured housing communities.

HAMPSHIRE'S "MOBILE HOME PARKS:" A REPORT ON ECONOMIC OUTCOMES (Sept. 2006) (*revised and reprinted* March 2010).

¹⁰ UTAH MANUFACTURED HOMEOWNERS ACTION GROUP, RESIDENT OWNED COMMUNITIES (UNDATED), *available at* www.umhag.org/?page_id=57.

¹¹ See AARP, MANUFACTURED HOUSING COMMUNITY TENANTS: SHIFTING THE BALANCE OF POWER 5 (2004).

¹² Sean West, Federal Reserve Bank of San Francisco, *Manufactured Housing Finance and the Secondary Market*, 2 COMMUNITY DEV. INV. REV. 35, 43 (2006), *available at* <http://www.frbsf.org/publications/community/review/062006/west.pdf> (discussing the 2006 interview with Paul Bradley of the University of New Hampshire).

¹³ *Id.* See also MICHAEL SWACK & JOLAN RIVERA, U.S. DEP’T OF THE TREASURY, COMMUNITY DEVELOPMENT AND FINANCIAL INSTITUTIONS (CDFI) FUND, THE EXPERIENCE OF THE NEW HAMPSHIRE COMMUNITY LOAN FUND IN MAINSTREAMING OF ACQUISITION LOANS TO COOPERATIVE MANUFACTURED HOUSING COMMUNITIES 5 (2009), *available at* http://www.carseyinstitute.unh.edu/docs/CDFI_MHP_Report__v_10%20final.pdf (describing the many “economic and social challenges” faced by residents of investor-owned manufactured housing communities).

LENDING ON INDIVIDUAL MANUFACTURED HOMES

II. The Enterprises Should Receive Duty-to-Serve Credit for Purchasing High-Quality, Conventional and Chattel Mortgages Financing the Purchase of Manufactured Homes.

The Enterprises should receive DTS credit for loans secured by manufactured homes on, or to be placed on, leased land without regard to whether the home classifies as real or personal property *if and only if* the loans meet criteria to protect homeowners, lenders, and the Enterprises.

A. The Enterprises Should Receive DTS Credit for Manufactured-Home Loans So Long As the Loans Meet Certain Safety and Soundness Criteria.

Specifically, the Enterprises should receive DTS credit for loans that meet all of the following “safety and soundness” measures:

- a) The lease term exceeds the loan term by at least five years and is renewable in the absence of just cause. The lease or state law should restrict unjust evictions by requiring good cause for eviction, providing some method by which the amount of any rent increases can be anticipated, grace periods for rent payments, and by providing a right to cure.
- b) State law or the lease permits the formation of resident associations and the right to associate and organize. This enables community residents to protect their rights, including the right to attempt purchasing the community should it be marketed for sale. The ability to enforce this and other homeowner rights should reduce the risk of default by having a positive impact on homeowners’ security, communities’ maintenance, and the re-sale value of the homes in them.
- c) State law or the lease includes language giving a resident association the right to be notified and to present a competing purchase offer before the sale or closure of the community.
- d) State law or the lease allows transfer of the home to a new owner by the borrower or the lender in the event of default by:
 - Allowing sale of the home in the community,
 - No unreasonable restraint on subleasing, assignment, or re-issuance of lease for the unexpired term to the new Buyer,
 - Allowing “For Sale” signs,
 - Placing limits on the landowners’ discretion to reject new purchasers, and
 - Providing a reasonable time period after an eviction to sell the home.
- e) State law or the lease protects lender interests and the home’s value by requiring notice to the lender and a right to cure upon default on the ground lease and allowing the lender to sell the home on site after foreclosure.

Alternatively, the FHFA might choose to provide DTS credit only for loans secured by homes on resident-owned communities but not investor-owned communities. If the residents truly own the community such that each resident has an ownership interest in the community or membership in and control over the entity that owns the community, then this ensures that the residents will control the community collectively and will provide these same protections to the residents.

B. The Legal Landscape Surrounding Thousands of Manufactured-Home Owners Should Lead the FHFA to Reconsider Its Blanket Exclusion of Chattel Lending.

The FHFA has correctly recognized that chattel loans can be very dangerous. When compared to conventional mortgages, chattel mortgages typically include:

[s]horter loan terms (typically 20 years instead of 30); [h]igher interest rates (at least two to five percentage points higher); [f]ewer rights when in default; and [a] more limited pool of lenders (including the common practice of in-house financing by manufactured home retailers), which reduces a consumer's opportunity to shop for competitive loans and affects home resale values.¹⁴

Therefore, consumers purchasing homes are generally better off using real property loans rather than chattel loans. Chattel lenders are more likely to make their loans as part of a sale from a dealer rather than for a refinance or private sale because lenders making chattel loans are more likely subsidiaries or captive lenders of manufacturers. Furthermore, chattel loan borrowers also have fewer options for loss mitigation, leaving them in even more vulnerable positions. We enthusiastically agree that the Enterprises should vigorously promote the industry's use of real estate mortgages, rather than chattel mortgages, to finance manufactured homes.

Currently, however, only one-third of all manufactured homes are titled as real property.¹⁵ This is partly due to the fact that some states do not permit homeowners to title their manufactured homes as real property. Other states have statutes that allow owners to convert to real property titling, but the requirements for conversion vary widely from state to state and are often complicated and burdensome. Given this legal landscape, a blanket exclusion of chattel lending from the Enterprises' duty to serve responsibilities would harm manufactured-home owners in those states.

It is important, however, not to conflate the issue of whether the resident owns or leases the land with the issue of whether the home is titled as real or personal property. The FHFA, in its discussion of chattel lending, quotes an Abt Associates study regarding the opportunity for appreciation in homes on leased land. This cite in a discussion of whether or not to provide DTS credit for chattel loans indicates confusion regarding these issues. In some jurisdictions, homes

¹⁴ I'M HOME, FINANCING HOMES IN COMMUNITIES 1 (Sept. 2008), available at http://www.consumerlaw.org/issues/mobile_homes/content/CFED-Conventional_Financing.pdf.

¹⁵ See INNOVATIONS IN MANUFACTURED HOMES (I'M HOME), CONVENTIONAL MORTGAGE FINANCING (June 2010) (stating that in 2008, approximately 50,000 manufactured homes were titled as personal property, whereas only 22,000 were titled as real property); See e.g., DELAWARE HOUSING COALITION, FIRST ANNUAL REPORT: WHO CAN AFFORD TO LIVE IN DELAWARE? (2007) (discussing the fact that Delaware does not treat manufactured homes as real property, so "their opponents often lack access to mortgage financing" and must finance their homes through chattel lending "at interest rates ranging from 14% to 22%").

sited on leased land may be real property, and in some jurisdictions, homes sited on owned land might not be titled as real property.

This confusion emphasizes the need to incorporate guidelines which would protect lenders and homeowners. We recommend that the Enterprises receive DTS credit only for those loans meeting a number of quality and safety criteria. While it is true that denying DTS credit for unrestricted chattel lending would be better than granting credit for unrestricted chattel lending, the best approach is more nuanced. The FHFA should incorporate the underwriting guidelines we recommended in our previous comment,¹⁶ as they would protect the Enterprises while serving the vastly underserved manufactured-housing market where homeowners are often faced with no alternative to chattel lending at present. Such requirements would require no legislative changes. As with many other requirements, these essential conditions could be part of the underwriting requirements and accomplished by either lease terms or statutory protections.

C. The Enterprises Should Receive DTS Credit for Purchase-Money or Refinance Loans—Chattel or Real Property Loans—If and Only If the Loans Include Underwriting Requirements That Will Protect Homeowners and Lenders.

The FHFA should restrict the manufactured-home loans that qualify for DTS credit, regardless whether the home is on leased or owned land, or considered real or personal property, to only those that meet all of the following safety and quality measures:

1. An APR lower than the rate for higher-priced mortgage loans (as defined by the Federal Reserve Board's Regulation Z, § 226.35)¹⁷ regardless of whether the loan is subject to the Truth in Lending Act. Higher-priced mortgage loans (HPML) are a category of loans the Board has found to pose greater risk to homeowners and to require greater scrutiny. The APR trigger for HPMLs is a reasonable level to set for GSE purchases. Based on estimates of historical rates,¹⁸ this cap would permit the Enterprises

¹⁶ See Comments of the National Consumer Law Center (NCLC) to the Federal Housing Finance Agency (FHFA), *Proposed Rulemaking on the Duty to Serve Underserved Markets for Enterprises*, 12 C.F.R. pt. 1282, Sept. 18, 2009 (describing the guidelines on pages 7 and 8).

¹⁷ The regulation's definition is as follows:

- (a) Higher-priced mortgage loans —(1) For purposes of this section, a higher-priced mortgage loan is a consumer credit transaction secured by the consumer's principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points for loans secured by a first lien on a dwelling, or by 3.5 or more percentage points for loans secured by a subordinate lien on a dwelling.

Federal Reserve Board Regulation Z, 12 C.F.R. § 226.35(a) (2010) (as amended by 73 Fed. Reg. 44603, effective Oct. 1, 2009).

¹⁸ The estimate of historical rates is based on a June 2006 article from the San Francisco Federal Reserve Bank, which states:

Consider data provided by two different lenders who deal predominantly in manufactured home chattel loans. Don Glisson Jr. of Triad Financial noted that his loans start at 7 percent, but only 20 percent of customers receive this rate. Others pay up to 10.5 percent, which is reserved for those with the lowest credit scores who are borrowing on a single-wide unit. David Rand of Origen Financial noted that his average was 9.5 percent with a range of 7.5 percent to 15 percent.

Sean West, *Manufactured Housing Finance and the Secondary Market*, COMMUNITY DEV. INVESTMENT REV. 35, 36 (2006).

to buy chattel loans on the lower end of the rate spectrum but would exclude more expensive loans.

2. No prepayment penalties. Not only do prepayment penalties increase the risk of default by preventing distressed homeowners from selling their home or refinancing into something more affordable, but they can also put a damper on the existing home market by forcing sellers to increase prices by enough to cover the penalty.

3. No loans with yield spread premiums or other incentives that encourage a third party arranging the loan (such as a retail seller, loan officer, or broker) to act against the borrower's best interest.

4. Chattel loan origination must comply with the Real Estate Settlement Procedures Act's requirements, such as disclosure of all costs and fees and the prohibition on kickbacks.

5. Loans should never exceed 100% of the appraised value. The sale price set by a retail home dealer should not be used in calculating the loan-to-value ratio because of the proven risk that dealers will inflate the price.¹⁹

CONCLUSION

Manufactured housing represents an immensely important yet underserved market that the Enterprises should better serve for the benefit of thousands of very low-, low-, and moderate-income families.²⁰ The manufactured housing market, however, has a number of unique aspects that the FHFA should consider before issuing its final duty-to-serve rule. The FHFA's final rule on the Enterprises' duty to serve should encourage responsible lending practices which will protect lenders, manufactured home owners, and residents of manufactured housing communities. The underwriting guidelines and recommendations discussed above would best enable the Enterprises to achieve this purpose.

¹⁹ See generally, KEVIN JEWELL, CONSUMERS UNION, WHAT'S IT WORTH? (2005).

²⁰ See WILLIAM APGAR ET AL., JOINT CTR. FOR HOUSING STUDIES OF HARVARD UNIV., AN EXAMINATION OF MANUFACTURED HOUSING AS A COMMUNITY- AND ASSET-BUILDING STRATEGY 1 (2002), available at http://www.jchs.harvard.edu/publications/communitydevelopment/W02-11_apgar_et_al.pdf (stating that the 8 million manufactured homes across the country comprise approximately two-thirds of all affordable housing added to the housing stock, which should "send a message to all who seek to promote home ownership for low-income families, as well as promote safe, affordable housing opportunities [for] disenfranchised communities"); see also Sean West, Federal Reserve Bank of San Francisco, *Manufactured Housing Finance and the Secondary Market*, COMMUNITY DEV. INV. REV. 35 (2009) ("[M]anufactured housing is a key resource when it comes to providing home-ownership opportunities for low-and moderate-income families . . .").