October 15, 2012

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Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

Re: Docket No. CFPB–2012–0037 or RIN 3170–AA13;
[Truth in Lending Act (Regulation Z); Loan Originator Compensation]

Dear Ms. Jackson:

On September 7, 2012 the Consumer Financial Protection Bureau (the "Bureau") published in the Federal Register proposed rules to amend Regulation Z, which implements the Truth in Lending Act (TILA), in order to implement changes by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) to those statutes regarding loan originator compensation and qualification standards, and other matters (together, the "Loan Originator Proposal"). Comments regarding the Loan Originator Proposal are due by or before October 16, 2012. Please find the comments of the Texas Manufactured Housing Association (TMHA) in response to the Bureau's Loan Originator Proposal.

Introduction of the TMHA and Background on Texas-Specific Issues

The TMHA represents over 1,100 manufactured housing professionals in the state of Texas. Members of TMHA include both large, vertically integrated manufacturing, retail and financing companies, medium sized companies and small, so-called "mom and pop" entrepreneurs who own and operate retail locations and manufactured home communities (sometimes called "land-lease communities").

Similar to the statistics for new home-starts for traditional site-built homes, the statistical barometer in the manufactured housing industry is based on new manufactured home shipments and production. Over the past four and one-half years, Texas represents the largest number of manufactured housing shipments per state in the United States.[1] Over the past year, Texas new manufactured home shipments accounted for 16.9 percent of the national market share and 22.7 percent of the nation's production.[2]

There are sixteen (16) manufactured housing factories located in Texas, the most per state in the nation, employing a range of highly skilled workers averaging from 125 to 250 jobs per factory. According to the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, there

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[1] According to Institute for Building Technology and Safety (IBTS), nationally in 2008 Texas represented 13.6% in shipments and 18.3% in production. 2009 Texas represented 14.6% in shipments and 21.3% in production. 2010 Texas represented 16% in shipments and 22.9% in production. 2011 Texas represented 16.9% in shipments and 22.7 in production.
[2] Source: Institute for Building Technology and Safety (IBTS)

are 726 active licensed manufactured housing retailers in Texas, and 931 active manufactured housing salesperson licensees.[3]

Overall, there are approximately 9.7 million housing units located in Texas.[4] Of this number, 747,975 are manufactured homes, comprising 7.7 percent of the housing stock in the state in all areas (metropolitan and rural).[5] As noted below, however, and, as to be expected, the percentage of manufactured homes as part of the overall housing stock in rural areas in Texas is much higher than 7.7 percent. Texas has a 64.8 percent homeownership rate, and the median home value is $123,500, with a median household income of $49,646.[6] According to data from the Manufactured Housing Institute (or MHI, the national trade association for the manufactured housing industry), approximately 60 percent of manufactured homes are located in rural areas. Based on information available to us, the percentage of manufactured homes that are located in rural areas in Texas is much higher than 60 percent.[7]

Over thirteen (13.2%) percent of all owner-occupied housing units located in Texas cost less than $50,000, with those homes costing between $50,000 and $99,999 comprising 25.2 percent of the housing units in Texas. In other words, 38.4 percent of owner-occupied housing units in Texas units cost less than $100,000. Approximately twenty-three (22.9 percent) percent of Texas borrowers with have a monthly mortgage payment of less than $1,000. However, 24.1 percent of such persons have monthly housing ownership costs of 35 percent or more of their household income. Compared to the rental market for Texans, 39.9 percent have monthly rental costs of 35 percent or more of their household income. Over fifty (50.2 percent) percent of such persons have a total annual income and benefits of less than $50,000 per year.

Thus, to a great extent, more broadly, the manufactured housing industry serves a lower income, rural and affordable housing segment of the population. As reflected by the information above, this also is the case in Texas.

Comments

With these Texas state-specific facts as a backdrop, we indicate herein that the Bureau's Loan Originator Proposal, if not revised, will have a severe and adverse impact on Texas consumers, Texas-based small businesses, rural areas of Texas and the Texas economy as a whole. Further, as explained in more detail below, the presence of large and predominately Spanish-speaking communities within Texas, combined with the inter-play of the hyper-technicalities of this, and other proposed Bureau rules, make aspects of these proposals unreasonable, not viable, impractical and unworkable.

Overview of Mortgage Market

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[3] Source: Manufactured Housing Division of the Texas Department of Housing and Community Affairs manufactured housing database (http://mhweb.tdhca.state.tx.us/mhweb/main.jsp)

[4] Source: 2010 Census, United States Census Bureau

[5] Source: 2010 Census, United States Census Bureau

[6] Source: 2010 Census, United States Census Bureau

[7] We take note of the Bureau's comment in its HOEPA Proposal that nearly 16 percent of housing units in rural areas are manufactured homes. However, this views the total population of homes (both manufactured and "stick-built") in rural areas, and not the percentage of the total delivery of manufactured homes to rural areas. Nonetheless, we submit that even 16% of the housing stock of rural areas is more than statistically significant, and we further submit that, based upon data available to us, the percentage of manufactured homes as part of the overall housing stock in rural areas of Texas is much higher than 16%.

The Bureau describes the many actors involved in the origination of a residential mortgage loan. In addition to a lender and the consumer, a residential mortgage loan transaction may involve a mortgage broker, a settlement agent, an appraiser, insurance providers, and others.

The Bureau states that prior to 2010, mortgage brokers were free to charge consumers directly for additional origination points or fees, which were generally described as compensating for the time and expense of working with the consumer to submit a loan application package. This compensation structure was problematic in the Bureau's view both because the loan originator had an incentive to steer borrowers into less favorable pricing terms and because the consumer may have paid origination fees to the loan originator believing that the loan originator was working for the borrower, without knowing that the loan originator was receiving compensation from the creditor as well. The Bureau also describes the recent history of the mortgage market, and the financial crisis.

Respectfully, the Bureau does not describe the point of sale, and credit granting process in the manufactured housing industry. However, we do appreciate that the Bureau does not suggest that the manufactured housing industry was part of the catalyst to the financial crisis, and we would submit that it was not.

Prior to the enactment of the S.A.F.E. Act, and the adoption by most of states of the Model S.A.F.E. Act promulgated by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, the consideration of viable financing options for a consumer purchaser of manufactured homes historically began, but was not fully processed or completed, at the point of sale. This approach made perfect business sense in that a seller of homes (a manufactured housing retailer) wanted to know and absolutely had to know some basic criteria about a consumer's credit profile and down payment capacity in order to intelligently explain to the consumer which types of homes and models the consumer may qualify to purchase.

The enactment of the S.A.F.E. Act in 2008, and the adoption by most of states of the Model S.A.F.E. Act in 2009, turned this point of sale model, where consumers where both informed and preliminarily vetted, on its ear. Indeed, in our discussions with state mortgage banking regulators at the time of the enactment of the S.A.F.E. Act, it was our clear impression that they did not intend these consequences to befall the manufactured housing industry as a result of the of the Model S.A.F.E. Act. Unfortunately, they seemed neither inclined nor motivated to reverse it.

Thankfully, in June 2011, the Department of Housing and Urban Development (HUD) issued a final S.A.F.E. Act rule which at least gave some modicum of guidance to these important and historical point of sale structural mechanisms in the manufactured housing industry. The Bureau inherited that regulation and designated it as Regulation H.[8]

Unfortunately, the Bureau's Loan Originator Proposal, if adopted as drafted, will set back the clarifications made by HUD in its final S.A.F.E. Act rule (and as contained in the Bureau's current Regulation H) in some important areas of manufactured housing finance, and then some. As described below, we believe changes to the Loan Originator Proposal in these areas are highly warranted, not only to preserve the direction and progress that Regulation H represents, but also to avoid the consequences that we think would befall the manufactured housing industry if changes to the Loan Originator Proposal are not made, which consequences we also believe are unintended, but nonetheless dire.

Regarding the Bureau's description of the actors involved in the origination of a mortgage loan, of note, comparatively speaking, with regard to the manufactured housing industry, particularly the sale of chattel

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[8] 12 C.F.R. § 1008.1 *et seq.*

only manufactured homes, mortgage brokers play very little, if any, role. Further, there are primarily four or five nation-wide financiers in the manufactured housing industry, and then a large number of small community banks and credit unions that fill in the gaps locally. We understand that both of these financing sources (nation-wide and local sources) operate primarily on a retail basis and typically pay their customer service representatives that act in the capacity of loan officers based on a salary with a small bonus when overall company profits warrant and make such payments viable. In short, the perceived abuses or ills that the Loan Originator Proposal is designed to address do not exist in the manufactured housing finance industry.

The Zero/Zero "Exception"

The Dodd-Frank Act provides that, for any mortgage loan, a mortgage originator may not receive from any person other than the consumer and no person, other than the consumer, who knows or has reason to know that a consumer has directly compensated or will directly compensate a mortgage originator may pay a mortgage originator any origination fee or charge except bona fide third party charges not retained by the creditor, mortgage originator, or an affiliate of the creditor or mortgage originator.[9]

Notwithstanding the above, a mortgage originator may receive from a person other than the consumer an origination fee or charge, and a person other than the consumer may pay a mortgage originator an origination fee or charge, if:

(i) the mortgage originator does not receive any compensation directly from the consumer; and

(ii) the consumer does not make an upfront payment of discount points, origination points, or fees, however denominated (other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or originator), except that the Board may, by rule, waive or provide exemptions to this clause if the Board determines that such waiver or ***exemption*** is in the interest of consumers and in the public interest (emphasis added).[10]

The above statutory prohibition contained within section 1402 of the Dodd-Frank Act has been denominated as the "points prohibition."

However, as stated above, Congress provided the Bureau with the specific authority, in section 1402 of the Dodd-Frank Act, to create an ***exemption*** from the points prohibition under section 129B(c) as added by section 1402 of the Dodd-Frank. Nonetheless, disappointingly, the Bureau instead proposed to create a very complex and unworkable ***exception*** to the points prohibition. The Bureau states in the Supplementary Information to the Loan Originator Proposal that it is proposing to use its ***exception*** authority under the Dodd-Frank Act to allow creditors to continue making available loans with points and/or fees, so long as they also make available a comparable, alternative loan. However, we note, as stated above, the Dodd-Frank Act provided the Bureau with authority to ***exempt*** creditors and originators from the so-called "points prohibition."

Nonetheless, the Bureau states in the Loan Originator Proposal that, before a creditor or mortgage broker may impose upfront points and/or fees on a consumer in a closed-end mortgage transaction, the creditor must make available to the consumer a comparable, alternative loan with no upfront discount points, origination points, or origination fees that are retained by the creditor, broker, or an affiliate of either (the

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[9] Section 1403 of the Dodd-Frank Act, amending section 129B of the Truth in Lending Act (as added by section 1402(a) of the Dodd-Frank Act) by inserting, after subsection (b) the foregoing as new TILA subsection 129B(c).
[10] The consumer financial protection functions of the Board (including authority over TILA) were transferred to the Bureau on the designated transfer date, i.e., July 21, 2011. See section 1062 of the Dodd-Frank Act.

so-called ‘‘zero-zero alternative’’). This alternative requirement would not be triggered by charges that are passed on to independent third parties that are not affiliated with the creditor or mortgage broker. This requirement also would not apply where the consumer is unlikely to qualify for the zero-zero alternative.

In transactions that do not involve a mortgage broker, the proposed rule would provide a safe harbor if, any time prior to application that the creditor provides a consumer an individualized quote for a loan that includes upfront points and/or fees, the creditor also provides a quote for a zero-zero alternative. In transactions that involve mortgage brokers, the proposed rule would provide a safe harbor under which creditors provide mortgage brokers with the pricing for all of their zero-zero alternatives. Mortgage brokers then would provide quotes to consumers for the zero-zero alternatives when presenting different loan options to consumers.

In the regard, the Bureau seeks comments on a number of related issues, including:

- Whether the Bureau should adopt as proposed a ‘‘bona fide’’ requirement to ensure that consumers receive value in return for paying upfront points and/or fees and, if so, the relative merits of several alternatives on the details of such a requirement;

- Whether additional adjustments to the proposal concerning the treatment of affiliate fees would make it easier for consumers to compare offers between two or more creditors;

- Whether to take a different approach concerning situations in which a consumer does not qualify for the zero-zero alternative; and

- Whether to require information about zero-zero alternatives to be provided not just in connection with informal quotes, but also in advertising and at the time that consumers are provided disclosures within three days after application.

Respectfully, for the reason stated below, the Bureau should withdraw its "zero-zero" alternative ***exception*** to the points prohibition, and provide an ***exemption*** from the points prohibition, as authorized by statute, without conditions. The "zero-zero" ***exception*** that the Bureau has created is not mandated specifically by statute, is very complex, and is one which will create costly compliance burdens for, and potential for violations by, the mortgage and manufactured housing industry. Further, as explained below, the creation of a "zero-zero" ***exception*** from the points prohibitions is both unnecessary and particularly problematic for the manufactured housing industry.

We are concerned, more broadly, that the Bureau's proposed "zero-zero" alternative effectively converts all lender fees into a form of "discount points." Further, although the Bureau requests comments on this item, the Loan Originator Proposal is not clear regarding the interest rate from which a loan's interest rate must be discounted. This means the Bureau must either finalize these intricate details in a loan originator rule by or before January 21, 2013, or provide sufficient and additional time for industry compliance with portions of a rule that are not specifically mandated by the Dodd-Frank Act. We also are concerned that the required "quote" of a "zero-zero" alternative, as proposed, practically would have to be issued prior to the issuance of a Good Faith Estimate (or Loan Estimate, as proposed under the Integrated Disclosure Proposal), and this required issuance of a "quote" at such time in the origination process would prove to be un-workable, impractical and create further compliance problems. Such an early issuance of a quote could not have much binding effect, and therefore, we believe, the creation of yet another such disclosure would case more confusion for consumers.

Respectfully, given the effects of the tradeoff between lender origination fees and/or discount points, and the note rate of interest on a loan, and the impact of those levers on the amount of a monthly loan

payment in a typical manufactured home loan, in our view, requiring the quote of a "zero-zero" loan will price many manufactured housing consumers out of the market, thus making more consumers unlikely to qualify for such a loan, creating a perverse, and circular, self-fulfilling but fact-specific prophecy that such a "zero-zero" quote need not be given because consumers will not so qualify. This is so because a small amount of discount points can substantially reduce a manufactured home borrower's monthly payment, especially on lower balance loans with a term of less than 30 years. In this regard, please note that many if not most chattel only manufactured home loans are originated with a term of 10 to 20 years, not 30 years.

For the reason stated above, we request that the Bureau withdraw its "zero-zero" alternative ***exception*** to the points prohibition, and provide an ***exemption*** from the points prohibition for all mortgage loans secured by manufactured housing units as well as land, as authorized by section 1402 the Dodd-Frank Act, without conditions. In the alternative, we request that the Bureau provide an exemption from the points prohibition for chattel only manufactured home loans, as authorized by section 1402 the Dodd-Frank Act, without conditions.

Fees Paid to Affiliates

Regarding the so-called "points prohibition", wherein it states that the consumer may not make an upfront payment of discount points, origination points, or fees, however denominated (other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or originator), we respectfully request that the rule be clarified to indicate that "fees, however denominated" do not include fees or charges paid to a home seller or servicer providers affiliate of a manufactured housing finance company.

We do not believe the rule is intended to cover sales price proceeds or compensation paid to others (affiliated or otherwise) that are not directly involved in financing or settlement services related to the closing of a loan. According, we request the Bureau to exclude from the fees that trigger the "points prohibition" not only sales price proceeds or compensation paid to others (affiliated or otherwise) that are not directly involved in financing or settlement services related to the closing of a loan, but also fees paid to affiliates of creditors where such affiliates are engaged in the settlement services business, but where the amounts that such affiliates assess are reasonable in light of market conditions.

In this regard, we note, by way of analogy, that title premiums are highly regulated and set by state insurance statutes and regulations. We also believe that a highly competitive, efficient, and regulated property and hazard insurance market place exists, such that further consumer protection is not served by including such customary and normal charges in the points prohibition trigger when such charges are paid to an affiliate of the creditor, but not when they are paid to a provider not affiliated with the creditor.

Retailer Employee Exclusion

The definition of "mortgage originator" in TILA section 103(cc)(2)(C)(ii) also expressly excludes certain employees of manufactured home retailers. The definition of "loan originator" in current § 1026.36(a)(1) does not address such employees. The Bureau proposes to implement the new statutory exclusion by revising the definition of "loan originator" in § 1026.36(a)(1) to exclude employees of a manufactured home retailer who assist a consumer in obtaining or applying to obtain consumer credit, provided such employees do not take a consumer credit application, offer or negotiate terms of a consumer credit transaction, or advise a consumer on credit terms (including rates, fees, and other costs).

While we note that the definition of a "loan originator" for Regulation Z purposes, as contained in the Bureau's Loan Originator Proposal, excludes certain employees of a manufactured home retailer,

nonetheless, we submit that such a definitional exclusion as proposed is highly situational and fact-specific, and thus, due to the inter-play of that definition with other Bureau proposed rules, as a practical matter, is un-workable. Combining a fact-driven definition of the exclusion from the loan originator definition for employees of a manufactured home retailer, with the inclusion of loan originator compensation as points and fees under the Bureau's HOEPA Proposal, is very problematic for the manufactured housing industry in Texas, and beyond. Lenders that do not employ, control or have a direct relationship with employees of a manufactured home retailer will have no way of knowing what interactions or discussion that such retailer employees have had with consumers. Thus, there will exist very fact-intensive criteria, unknown to lenders, which determine whether certain compensation should be included in the points and fees test under HOEPA, as proposed.

We believe that a broader and bright line exclusion from the definition of loan originator for a manufactured home retailer or its employees would achieve a more workable compliance standard for the manufactured housing industry and not have the chilling effect on legitimate business activity that, in our view, would occur under the proposed approach. We believe the Bureau has the tools and methodologies to do so, by way of analogy, through its Regulation H, and Appendix A to Part 1008 - Examples of Mortgage Loan Originator Activities. Therein exists detailed definitions and examples of what it means to take an a loan application, offer or negotiate the terms of a loan, and that there must be compensation or gain derived from and related to loan origination activity, as opposed to mere home sales activity.

Respectfully, detailed guidance and refinement of these very basic and fundamental and established concepts are woefully absent and inconspicuous in the Loan Originator Proposal. We are at a loss to understand why the Bureau would not want to create reasonable and consistent regulation in this very important area of the manufactured housing industry in Texas and beyond, but we implore it to do so as part of a finalized loan originator rule.

Further, in Texas, there is a very large Hispanic population. Many in the Hispanic communities in Texas are not bi-lingual and only speak and understand Spanish. The cultural dynamics of the Hispanic community must be better appreciated by a predominately English speaking regulator. In this regard, many retailers may speak primarily Spanish in communicating with such customers. The hyper-technicalities and inter-play of the S.A.F.E. Act, the HOEPA Proposal and the Loan Originator Proposal are difficult enough to understand in legal circles in English. It is unrealistic to expect a predominately English speaking lending community to adequately and quickly inform and train a predominantly Spanish speaking segment of the community, the failure of which may have dire consequences for some lenders due to the inter-play of the hyper-technicalities of current and proposed rules, as explained above.

Unless the Bureau revises the exemption from the definition of loan originators for employees of manufactured housing retailers, as requested herein, such risks may cause some lenders to become more circumspect where they cannot be certain of the discussions and sales negotiations that take place in a setting in which they do not employ or control personnel nor have a direct relationship with the point of sale, and cannot quickly or adequately train such personnel on new and groundbreaking rules, which can have what we believe are un-intended but a potentially toxic inter-play with each other with dire consequences. Such cultural disintermediation through regulation could lead to nothing short of disparate impact, causing further risks and complications. For this reason, and the other reasons outlined above, respectfully, for Texas, and we have no doubt, many other Spanish speaking areas of the country, the Bureau needs to re-think its definition of the exclusion of employees of a manufactured home retailer from the classification of a loan originator, as outlined above.

Respectfully, the manufactured housing industry needs better guidance and more predictable and workable mechanisms in this very important and fundamental area. As stated above, as a start, the Bureau could look to its own Regulation H, which it inherited from HUD. In this regard, with less

retailer employees being inadvertently caught up in the definition of a loan originator, the anti-steering and safe harbor provisions that otherwise apply to loan originators would not apply in an unduly or over-broad manner to sellers of homes that are not engaged in loan originator activity otherwise more broadly defined.

Until the Bureau can conduct further review in this area, we respectfully request that the Bureau provide a blanket exemption for employees of a manufactured home retailers from the definition of loan originator, or, in the alternative, as requested below, provide a very long exemption period under the rule (or specifically in this area) and/or a very long delayed effective date.

Effective Dates

The manufactured housing finance industry is tied to the residential mortgage industry. Any impact, confusion, dis-locations or disruptions in the residential mortgage industry will have a negative impact on the manufactured housing industry. Further, not all of the changes proposed by the Bureau under the Loan Originator Proposal are specifically mandated by Congress under Title XIV of the Dodd-Frank Act.

Indeed, the Bureau states that section 1400(c)(1) of the Dodd-Frank Act mandates that the Bureau prescribe implementing regulations in final form by January, 21, 2013 (i.e., the date that is 18 months after the “designated transfer date”) for regulations that are required under title XIV of the Dodd-Frank Act, and the Bureau must set effective dates of these regulations no later than one year from their date of issuance. The Bureau notes, however, importantly, that the Loan Originator Proposal, while implementing amendments under title XIV of the Dodd-Frank Act, are not regulations required under title XIV.

In this regard, we request that the Bureau utilize its authority to extend the effective date of any finalized loan originator rule to the greatest extent possible. Along these lines, given all else that is underway with Dodd-Frank Act implementation and Bureau proposed rules, we do not think it unwarranted for the Bureau to provide an exemption from a final loan originator rule of up to 24 or 36 months after the statutory effective date specified in section 1400(c)(1)(B) of the Dodd-Frank Act for certain Title XIV changes.

Conclusion

As noted above, we believe the Bureau should use its exemption authority for the "points prohibition" without conditions and scrap the complex "zero-zero" alternative exception. Further, we believe the Bureau should provide a clearer and broader exemption for the definition of loan originator for employees of manufactured home retailers, more consistent with its rules under Regulation H. Finally, we believe the Bureau should provide a sufficiently long exemption or delayed effective date for a final loan originator rule.

We appreciate this opportunity to comment upon this Loan Originator Proposal.

Very truly yours,

DJ Pendleton, J.D.
Executive Director
Texas Manufactured Housing Association