July 22, 2013

http://www.regulations.gov

Monica Jackson

Office of the Executive Secretary

Bureau of Consumer Financial Protection

1700 G Street NW

Washington, DC 20552

Re:Docket No. CFPB–2013–0018; RIN 3170–AA37; Proposed Amendments to the Amendments to the 2013 Mortgage Rules under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z); Proposed

Rule

Dear Ms. Jackson:

On June 21, 2013, the Consumer Financial Protection Bureau pre-published proposed amendments to certain of its 2013 Mortgage Rules (hereinafter the “June 21st Proposal”). The June 21st Proposal was published in the Federal Register on July 2, 2013.[[1]](#footnote-1) Comments are due on the June 21st Proposal by or before July 22, 2013.

The Bureau proposes in its June 21st Proposal to make seven (7) changes to certain of its 2013 Mortgage Rules, including changes to loss mitigation servicing procedures, the applicability of “rural and “underserved” areas, certain effective dates, and certain technical corrections.

Below we comment on several of these proposed changes, as follows:

* We support excluding from points and fees compensation paid by a manufactured home sellers to its employees,
* However, we request that the Bureau provide a specific bright line rule by which sellers and their employees can avoid being classified as loan originators organizations (or mortgage brokerage companies), or loan originators, respectively; or, alternatively, that the Bureau provide additional guidance regarding activities in which sellers and their employees permissibly may engage without being classified as loan originators organizations (or mortgage brokerage companies), or loan originators, respectively, and
* We request that the Bureau consider classifying manufactured home finance as an underserved market for purposes of certain of its 2013 Mortgage Rules.

***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.[[2]](#footnote-2) 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.[[3]](#footnote-3)

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 are 726 active licensed manufactured housing retailers in Texas, and 931 active manufactured housing salesperson licensees.[[4]](#footnote-4)

Overall, there are approximately 9.7 million housing units located in Texas.[[5]](#footnote-5) 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).[[6]](#footnote-6) 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.[[7]](#footnote-7)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.

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, and in many cases to a much greater extent than the Exempt Entities discussed above. As reflected by the information above, this also is the case in Texas.

***Comments***

*Bright Line Rule on to Allow Manufactured Home Sellers to Not Be Classified as a Loan Originator*

As stated above, we support excluding from points and fees compensation paid by a manufactured home sellers to its employees. However, while we believe such exclusion will reduce the compliance burden on lenders that may not have full information on the sales practices of sellers or individual activities or discussions the seller has with the prospective customer , we do believe that the exclusion does not go far enough to exclude a manufactured home seller or its employees from being classified as loan originator organizations (or mortgage brokerage companies) or loan originators, respectively. As discussed below, we believe the Bureau should provide a bright line rule of permissible activities in which a manufactured home seller or its employees can engage without falling under a classification of a loan originator organization or loan originator.

In this regard, we note the Bureau comment that: “It appears to the Bureau that when an employee of a retailer would qualify as a loan originator, the retailer also would qualify as a loan originator and therefore would qualify as a mortgage broker. If the retailer qualifies as a mortgage broker, any compensation paid by the retailer to the employee would be excluded from points and fees under § 1026.32(b)(1)(ii)(B).”[[8]](#footnote-8)

However, we submit that most, if not all, manufactured home sellers do not wish to be classified as a mortgage brokerage company or a financially related institution (as defined under other laws) because they do not wish to and cannot bear the cost of compliance with such laws.

Nonetheless, the sale of a manufactured home involves aspects which touch upon the homebuyer’s financial wherewithal to afford a particular home, including the amount of a down payment that the homebuyer may be able to afford, their current credit score, and whether the homebuyer has a current home to trade in, among other factors. In addition, some sellers of manufactured homes, such as a sale center of a manufactured home community, may permissibly obtain a consumer credit report or score for other purposes, such as the homebuyer’s ability to pay rent to a manufactured home community. Because sellers may have some financial information on a homebuyer, they may be in a position to assist a homebuyer in obtaining or applying to obtain a loan without being classified as a "mortgage originator" under the federal Truth-in-Lending Act. In fact, given the few lenders in the country that offer financing for manufactured homes, the ability to assist the consumer saves the consumer considerable time, effort and frustration from making application to lenders that the borrower has no chance of being approved. The Dodd-Frank Act appears to allow this approach.

Section 1402 of the Dodd-Frank Act amended the federal Truth-in-Lending Act to provide that an employee of a retailer of manufactured homes is not a mortgage originator if he or she does not take a residential mortgage loan application or does not offer or negotiate terms of a residential mortgage loan, and does not advise a consumer on loan terms (including rates, fees, and other costs). However, the Dodd-Frank Act provides that such person may ***assist*** a consumer in obtaining or applying to obtain a residential mortgage loan without becoming classified as a mortgage originator (emphasis added).[[9]](#footnote-9)

The Bureau previously stated in the Preamble to its final Loan Originator Compensation Rule that: "The one core activity that the exclusion permits manufactured housing retail employees to perform without becoming loan originators, "[a]ssisting a consumer in obtaining or applying to obtain" credit, has a statutorily defined meaning that does not include referring consumers to a creditor. Thus, employees of

manufactured home retailers who refer consumers to particular credit providers would be considered loan originators if they are compensated for such activity."[[10]](#footnote-10)

The Bureau did not, however, its final Loan Originator Compensation Rule go on to further explain the statutorily defined meaning of "assist."

The Dodd-Frank Act amended the federal Truth-in-Lending Act to provide that a person "assists a consumer in obtaining or applying to obtain a residential mortgage loan” by, among other things, advising on residential mortgage loan terms (including rates, fees, and other costs), preparing residential mortgage loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan." [[11]](#footnote-11) Based on the language of the statute, it appears a retailer’s employee could assist a home buyer in obtaining or applying to obtain a residential mortgage loan without becoming classified as mortgage originator as long as he or she does not advise a home buyer on loan terms (including rates, fees, and other costs).

However, in its June 21st Proposal the Bureau proposes to further read the word "assist" out of the statute.

The word "refer" is not used or defined in the statutory definition of the term “mortgage originator." In its final Loan Originator Compensation Rule, however, the Bureau expanded the word "offer" to include "refer."[[12]](#footnote-12)

Nonetheless, it seems to us that one could assist a homebuyer in obtaining or applying to obtain credit without referring that consumer to one particular creditor. It also seems to us that the Bureau could go one step further here, and craft a bright line rule that states if the seller provides the home buyer with a safe harbor anti-steering disclosure (similar to one as contemplated under the loan originator compensation rule) that merely lists multiple creditors (of which the retailer is aware in its area offers manufactured housing finance loans), with a disclosure that the retailer does not endorse any one creditor, that the retailer not be deemed a loan originator organization. Further, as the Bureau states in the Preamble to its final Loan Originator Compensation Rule, employees of manufactured home retailers who refer consumers to particular credit providers would be considered loan originators ***if they are compensated for such activity***.

Thus, we would submit that if a seller is not referring a home buyer to a particular credit provider, but is merely “assisting” the home buyer as permitted under the Dodd-Frank Act, and merely informs the home buyer about any available credit providers more generally, and is not being compensated by any creditor for such activity, that such retailer not be classified as a loan originator organization under the Loan Originator Compensation Rule (and that its employees also not be classified as loan originators). We request that this be the case regardless of whether or not the retailer has in its possession financial information on a home buyer, because, out of necessity, as described above, a retailer or seller (such as a manufactured home community) will need such information in order to determine whether and which type of home it may sell the home buyer, or whether to allow the home buyer’s entrance into a community as a permanent resident.

We further submit that since 2008, the manufactured housing industry has put into place procedures, similar to those outlined immediately above, in order to avoid taking a loan application or negotiating loans terms, as those concepts are defined under SAFE Act related provisions, and being classified as a mortgage loan originator under SAFE Act related provisions. In addition, manufactured home sellers perform sales related functions today, under these SAFE Act related proscriptions, for no compensation, other than the commission or profit on the sale of the home. Thus, these additional, but limited, functions are performed today, and provide some benefit to consumers, however, consumers do not (nor do others) pay for these additional functions.

We feel a bright line rule, as outlined above, will build on procedures already adopted in the manufactured housing industry, and because such a rule would be premised both on sellers not being compensated for such activity related to assisting a home buyer in obtaining or applying to obtain credit, and not referring a consumer to a particular credit provider, we feel more than adequate consumer protections would remain in place.

*Alternatively, Provide Additional Guidance on Permissible Activities for Manufactured Home Sellers Without Being Classified as Loan Originators*

In the event that the Bureau does not see fit to grant our request above, we respectfully request that the Bureau provide additional guidance regarding activities in which manufactured home sellers and their employees permissibly may engage without being classified as loan originators organizations (or mortgage brokerage companies), or loan originators, respectively.

Initially, we note that the Bureau states in the Preamble to its final Loan Originator Compensation Rule that, "A large number of manufactured housing industry commenters stated that the Bureau should further clarify what activities would be considered "assisting the consumer in obtaining or applying to obtain" credit, "taking an application," "offering or negotiating terms," or "advising" on credit terms. The Bureau has included several clarifications of these elements of the definition of ‘‘loan originator’’ in this final rule in § 1026.36(a)(1)(i) and comments 36(a)-1.i.A and 36(a)-4, as discussed above."[[13]](#footnote-13)

By making reference to comment 36(a)-4 in this passage (which discusses administrative and clerical tasks that may be performed while not rising to the level of a loan originators), it is clear that the Bureau intends that this commentary also provide guidance to manufactured housing sellers.

For the reasons outlined below, we request that the Bureau both revise comment 36(a)-4 and make clear that it applies to sellers of manufactured homes.

As proposed, revised comment 36(a)-4 states that: "The definition of loan originator does not include a loan originator’s or creditor’s employee (or agent or contractor) who provides a credit application form from the entity for which the person works to the consumer for the consumer to complete or, **without assisting the consumer in completing the credit application**, processing or analyzing the information, or discussing particular credit terms or particular credit products available from a creditor to that consumer selected based on the consumer’s financial characteristics, deliver the credit application from a

consumer to a loan originator or creditor."[[14]](#footnote-14)

However, as the Bureau previously stated in the Preamble to its final Loan Originator Compensation Rule, "The one core activity that the exclusion permits manufactured housing retail employees to perform without becoming loan originators, "[a]ssisting a consumer in obtaining or applying to obtain" credit.[[15]](#footnote-15) The Bureau should revise this comment to state that a manufactured home seller may "[a]ssist a consumer in obtaining or applying to obtain" credit without becoming a loan originator.

Further, as requested above, if the Bureau does not create a bright line rule of permissible activities in which a manufactured home seller or its employees can engage without falling under a classification of a loan originator organization or loan originator, then it should provide ample examples of how a seller of a manufactured may "assists a homebuyer in obtaining or applying to obtain a residential mortgage loan" without being classified as a loan originator. Such activities should include, but not be limited to, reviewing a homebuyer application in order to ensure it is completely filled out, explaining any terms in the application or application related disclosures, transcribing information for a homebuyer upon the homebuyer's request, and upon the homebuyer's request explaining credit terms to the home buyer.

Given that the manufactured housing finance industry is so small, a manufactured home seller or its employees also should be allowed to share general information with homebuyers about available financing sources, and provide information or brochures provided by multiple financiers, such as down payment requirements.

We also request that the Bureau make clear in this comment, and other comments that use the following terms, that, in addition to "employees, agents and contractors" of the creditor, that such activities (such as administrative and clerical services) also can be provided by manufactured home sellers that are independent contractors.

Moreover, we request that the Bureau revise proposed comment 36(a)-4(iii)(C) to provide that, for manufactured home sellers, coordinating the consummation of the credit transaction permissibly may include the following activities without the seller or its employees being classified as a loan originator organization or loan originator: i) receiving closing document from the creditor, ii) delivering closing documents to the homebuyer for review and execution, and iii) transmitting the completed documents back to the creditor. Of course, these provisions could be premised upon the current proposed comment that the credit terms will have already been accepted by the homebuyer from the creditor.

We further request the Bureau make clear that a manufactured home seller that merely publishes or broadcasts that third parties can or will perform loan originators activities does not make the seller a loan originator.

The Bureau must recognize that the point of sale process in manufactured home sales cannot be fully extricated from some basic understanding on the part of the homebuyer of fundamental financing requirements and terms, such as down payments and the ability to afford a certain size home. As such, the home seller needs to be able to discuss these matters with homebuyers without becoming subject to a panoply of complex and onerous regulatory schemes. In this regard, the Bureau needs to recognize that it would be a disservice to homebuyers for a seller to show a home to a homebuyer that the homebuyer cannot afford.

We do realize it would be difficult to craft a myriad of examples of permissible activities that address or cover all situations of the home sales process, and that is why we make the request for such examples in the alternative. We would much prefer a bright line rule, as outlined above, as such a bright line rule would be more objective and provide ease and certainly of compliance without undermining consumer protections.

*Manufactured Home Finance as an Underserved Market*

In its June 21st Proposal, the Bureau states that it will re-examine the underlying definitions of “rural” and “underserved” over the next two years. As part of this re-examination, we respectfully request that the Bureau consider classifying the manufactured housing market as an underserved market for purposes of certain of its 2013 Mortgage Rules. Section 1129 of the Housing and Economic Recovery Act of 2008 (the “HERA”) directed the Enterprises (GSEs) to 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.[[16]](#footnote-16)

As you know, shortly after the enactment of the HERA, the GSEs were placed into conservatorship, and the GSEs never undertook their obligation under 12 U.S.C. §4565, as amended by the HERA, with respect to manufactured housing. The Federal Housing Finance Agency (FHFA) issued an Advance Notice of Proposed Rulemaking on August 4, 2009, and published a Notice of Proposed Rulemaking on June 7, 2010.[[17]](#footnote-17) The proposed rule listed the types of GSE transactions and activities that would receive consideration toward its duty to serve. In that proposal, however, only manufactured homes titled as real property would count toward the duty to serve the manufactured housing market. Although a final rule continues to be under consideration, FHFA is reassessing the duty to serve requirements in light of changing economic conditions, the GSEs’ conservatorship status, and the financial condition of the GSEs to determine the best manner in which to proceed.[[18]](#footnote-18)

Today, industry estimates indicate over sixty percent (60%) of manufactured homes sold and financed are personal property (i.e., chattel-only) transactions. As outlined above, in Texas, and more broadly, the manufactured housing industry serves low-, and moderate-income segments of the population. Most, if not all, of the chattel only manufactured home loans made by lenders are held in portfolio by the lenders making the loans. There is no viable secondary market available today for chattel only loans. There is, however, an established Congressional recognition that mortgage financing for manufactured housing is an underserved market. If the Bureau, as part of its re-examination effort of the underlying definitions of “rural” and “underserved”, were to classify the manufactured housing market as underserved, we believe that would serve as a foundation to further hone and craft rules to assure that access to this important housing market is not further constrained.

***Conclusion***

We appreciate this opportunity to comment upon the Bureau's June 21st Proposal. We trust that you will find our comments above both helpful and persuasive and we trust that you will consider and treat our comments favorably.

Very truly yours,

DJ Pendleton, J.D.

Executive Director

Texas Manufactured Housing Association

1. 78 Fed. Reg. 39909 (July 2, 2013). [↑](#footnote-ref-1)
2. 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. In 2011, Texas represented 16.9% in shipments and 22.7 in production. [↑](#footnote-ref-2)
3. Source: Institute for Building Technology and Safety (IBTS) [↑](#footnote-ref-3)
4. 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>) [↑](#footnote-ref-4)
5. Source: 2010 Census, United States Census Bureau [↑](#footnote-ref-5)
6. Source: 2010 Census, United States Census Bureau [↑](#footnote-ref-6)
7. Source: 2010 Census, United States Census Bureau [↑](#footnote-ref-7)
8. 78 Fed. Reg. 39909, 39920 (July 2, 2013). [↑](#footnote-ref-8)
9. 15 USC § 1602(cc)(2). [↑](#footnote-ref-9)
10. 78 Fed. Reg. 11280, 11305 (Feb. 15, 2013). [↑](#footnote-ref-10)
11. 15 USC § 1602(cc)(4). [↑](#footnote-ref-11)
12. 12 C.F.R. § 1026.36(a). [↑](#footnote-ref-12)
13. 78 Fed. Reg. 11280, 11304-11305 (Feb. 15, 2013). [↑](#footnote-ref-13)
14. Proposed Official Staff Commentary, 12 C.F.R., Part 1026, cmt. § 36(a)-4(i). [↑](#footnote-ref-14)
15. 78 Fed. Reg. 11280, 11305 (Feb. 15, 2013). [↑](#footnote-ref-15)
16. Section 1129 of the HERA amended section 1335 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. §4565). [↑](#footnote-ref-16)
17. 74 Fed. Reg. 38572 (August 4, 2009); 75 Fed. Reg. 32099 (June 7, 2010). [↑](#footnote-ref-17)
18. FHFA Annual Housing Report October 2012, <http://www.fhfa.gov/webfiles/24622/1112_2012AnnualHousingReport.pdf> [↑](#footnote-ref-18)