September 7, 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: HOEPA Proposal; Docket No. CFPB–2012–0029 or RIN 3170–AA12

Dear Ms. Jackson:

Please find the comments of the Texas Manufactured Housing Association (TMHA) in response to the Consumer Financial Protection Bureau's (or "CFPB" or "Bureau") proposed High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X) (hereinafter the "HOEPA 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 are 726 active licensed manufactured housing retailers in Texas, and 931 active manufactured housing salesperson licensees.[3]

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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)

[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)

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) 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 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.[8]

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.

Overview of Comments and Requests

With these Texas state-specific facts as a backdrop, we indicate herein that the Dodd-Frank Act changes made to the federal HOEPA statute, and the Bureau's HOEPA Proposal issued to implement those statutory changes, if not revised with respect to manufactured housing finance issues, 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.

In order to alleviate these adverse impacts, as outlined more fully below, we respond to the Bureau's requests for comments to its HOEPA Proposal by requesting that it provide a permanent exemption from a final HOEPA rule for any loan secured in whole or in part by a manufactured home (including so-called "chattel only" and "land/home" loans).[9] If, notwithstanding compelling arguments to the contrary, the

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[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%.
[8] Source: 2010 Census, United States Census Bureau
[9] Chattel only loans are secured only by the manufactured home, as personal property, and not the real property upon which the home is situated. Land/home loans generally are secured by both the home and the real property upon which the home is situated.

Bureau is not inclined to provide such a more comprehensive exemption, then we request that the Bureau provide a permanent exemption from a final HOEPA rule for any purchase money loan secured in whole or in part by manufactured home. In addition, and in any event, we request that the Bureau provide a permanent exemption from a final HOEPA rule for "chattel only" manufactured home loans, and certainly for purchase money "chattel only" manufactured home loans.

Finally, if the Bureau is unwilling to provide any such permanent exemptions, then, in the alternative, we request that the Bureau provide such and comparable temporary exemptions from a final HOEPA rule for a time sufficient for the Bureau to gather and adequately consider additional data about the manufacturing housing industry. We note this extension period should be co-extensive with the period that the Bureau will provide to finalize the "Affected Title XIV Disclosures” and "Know Before You Owe" combined RESPA-TILA disclosures as also recently proposed by the Bureau under its Integrated Disclosure Proposal, or longer.

In addition, and as an alternative to such a permanent or temporary exemption for all or any class of manufactured home loans, we request that the Bureau provide under a final HOEPA rule increased APR and points and fees and dollar thresholds for determining the applicability of HOEPA provisions to manufactured home loans, and specifically exclude manufactured home retailer sales compensation from the definition of points and fees or finance charges and dollar amounts under the HOEPA thresholds and triggers.

Overview of the Dodd-Frank HOEPA Changes and the Bureau's HOEPA Proposal

HOEPA was originally enacted in 1994 in response to evidence concerning abusive practices in mortgage loan refinancing and home-equity lending. The statute applied to closed-end mortgage credit, but excluded purchase money mortgage loans.

The Dodd-Frank Act amends HOEPA triggers to provide that a loan would be covered if any one of the following thresholds is met: (i) the annual percentage rate (APR) exceeds the average prime offer rate (or APOR) by 6.5 percentage points for most first-lien mortgages, and 8.5 percentage points for subordinate lien mortgages or if the dwelling is personal property and the transaction is for less than $50,000; (ii) points and fees exceed 5 percent of the total transaction amount, or in the case of a loan for less than $20,000, the lesser of 8 percent of the total transaction amount or $1,000 (adjusted for inflation); or (iii) the creditor may charge a prepayment penalty more than 36 months after loan consummation or account opening, or penalties that exceed more than 2 percent of the amount prepaid.

The Dodd-Frank Act also amended HOEPA to remove the purchase money exemption and includes in "points and fees" all compensation paid directly or indirectly by a consumer or creditor to a loan originator, as defined in § 1026.36(a)(1). The Dodd-Frank Act also adds a definition of "mortgage originator" under the federal TILA provisions. We note further that on August 17, 2012, the Bureau also issued a proposed Loan Originator rule (“Loan Originator Proposal”) and therein defines a “loan originator’ as any person who for compensation or other monetary gain takes an application, arranges, offers, negotiates, or otherwise obtains an extension of consumer credit for another person. This definition substantially expands the definition of loan originator as contained under current Regulation Z, and defines that term in a manner that is inconsistent with the definition of "mortgage loan originator" under the federal S.A.F.E. Act. We note that the definition of a “loan originator” for Regulation Z purposes, as contained in the Bureau’s Loan Originator Proposal, does not include an employee of a manufactured home retailer who assists a consumer in obtaining or applying to obtain consumer credit, provided such employee does 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).

The Bureau's Authority and Duties

As amended by the Dodd-Frank Act, the Bureau may increase the APR measure by up to 10 percentage points. Further, however, with respect to the high-cost mortgage provisions of TILA section 129, TILA section 129(p), 15 U.S.C. 1639(p), as amended by the Dodd-Frank Act, grants the Bureau authority to create exemptions to the restrictions on high cost mortgages and expand the protections that apply to high-cost mortgages. Under TILA section 129(p)(1), the Bureau may exempt specific mortgage products or categories from any or all of the prohibitions specified in subsections (c) through (i) of TILA section 129, if the Bureau finds that the exemption is in the interest of the borrowing public and will apply only to products that maintain and strengthen home ownership and equity protections.

Further, TILA section 103(bb)(2)(A) and (B) provides the Bureau with authority to adjust the percentage points referenced in the APR threshold if the Bureau determines that the increase or decrease is consistent with the statutory protections for high-cost mortgages and is warranted by the need for credit. The Bureau, however, in its HOEPA Proposal did not propose to make such a determination, either in conjunction with general implementation of the Dodd-Frank Act or in conjunction with the proposed expansion of the definition of finance charge. However, the Bureau seeks comment and data on whether any adjustments to the numeric triggers would better protect consumers from the risks associated with high-cost mortgages or are ***warranted by the need for credit***.

Moreover, the Bureau has authority pursuant to TILA section 105(a) to provide additional requirements, classifications, differentiations, or other provisions, and to provide for such adjustments and ***exceptions*** for all or any class of transactions as are necessary, in the Bureau’s judgment, to effectuate the purposes of TILA and facilitate compliance.

Importantly, Section 1022(b)(2)(A) of the Dodd-Frank Act requires the Bureau to consider the potential benefits and ***costs of a regulation to consumers*** and covered persons, including the potential ***reduction of access by consumers to consumer financial products or services***; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Act, and ***the impact on consumers in rural areas***.

Effective Dates and Temporary Extensions

Under section 1400(c)(1) of the Dodd-Frank Act, regulations that are required to be issued to implement amendments under Title XIV by the Dodd-Frank Act take effect not later than one year from the date of the issuance of the final implementing regulations. The Bureau states, however, that the regulations proposed under its HOEPA Proposal, while implementing amendments under Title XIV of the Dodd-Frank Act, are not regulations required to be issued by the Act. Therefore, the Dodd-Frank Act does not require the final regulation to be effective within one year from issuance of that final regulation. Title XIV amendments that are not required by the Dodd-Frank Act to be implemented by regulation take effect on the effective date established by the final regulations implementing the amendments.

The Bureau requests comments on the time period that should be provided to implement the changes that will be required by a final HOEPA rule. The Bureau also seeks comment on potential implementation periods relating to certain changes being proposed in the 2012 TILA-RESPA Proposal to the definition of finance charge under Regulation Z, and related mitigation measures that the Bureau is proposing in the

HOEPA Proposal to address the impacts on HOEPA coverage; however, the comment period on this specific provision has been extended until November 6, 2012.

TMHA Comments and Requests for Revisions to the HOEPA Rule

Exemption

As noted above, HOEPA was originally enacted in 1994 in response to evidence concerning abusive practices in mortgage loan refinancing and home-equity lending. The statute as originally enacted excluded purchase money mortgage loans. In this regard, we note that most manufactured home loans primarily are purchase money loans and are made pursuant to non-"exotic" mortgage terms in that such loans are typically fixed-rate, fully amortizing loans, without prepayment penalties or balloon payment features. While we understand that the Dodd-Frank Act was enacted in part to curb certain mortgage practices that contributed to a larger financial crisis, we note that manufactured housing finance does not include the abusive practices targeted and was not a cause of the crisis.

In the Bureau's section 1022(b)(2) review and analysis, it states that it expects that only a small fraction of loans under the proposed rule would qualify as HOEPA loans and that few lenders would make a large number of HOEPA loans. Accordingly, the Bureau concludes that the proposed rule could increase the cost of credit or curtail access to credit for a ***small*** share of purchase money borrowers because creditors may be reluctant to make HOEPA loans and may no longer offer loans that they currently make but that would meet the new HOEPA triggers. The Bureau also states that, based on outreach, it understands that some lenders have a negative perception of HOEPA loans. This perception coupled with the restrictions and liability provisions associated with HOEPA loans may reduce creditors' ability or willingness to make high-cost purchase money mortgage loans. Creditors may also be reluctant to make high-cost purchase money mortgage loans that they previously would have extended because of the general inability to sell HOEPA loans in the current market, primarily due to assignee liability. The Bureau further states that HOEPA loans are expected to continue to account for a small fraction of closed-end mortgage loans.

Thus, concludes the Bureau, the proposed rule would be expected to have no direct impact on the vast majority of creditors, since, at most, about ten (10) percent of creditors are predicted to make HOEPA loans under the proposed rule, and few creditors are expected to make significant numbers of HOEPA loans. Similarly, concludes the Bureau, the proposed rule would not be expected to directly affect the vast majority of borrowers - those who do not apply for or obtain a high-cost mortgage.

While we agree that only a few lenders would make HOEPA covered loans, we adamantly disagree that only a small fraction of manufactured home loans under the proposed rule would qualify as HOEPA loans, and that the impact on the access to credit in the manufactured housing industry thus would also be small. On this point, as described in more detail below, respectfully, we note that the Bureau's analysis is fundamentally flawed and incorrect, and merits, at a minimum, excepting manufactured home loans from the HOEPA rule while the Bureau undertakes further adequate and more complete review and study of these issues.

Indeed, in its discussion in the HOEPA Proposal, the Bureau notes that the loans for manufactured housing typically have higher interest rates and therefore may be more likely than other mortgages to exceed the revised interest rate trigger. HMDA data suggest this is likely to be the case, since the share of home improvement or refinance loans (those types of loans currently covered by HOEPA) that are identified as HOEPA loans in those data is about 2–3 percent for loans secured by a manufactured home compared with about 0.05 percent of loans secured by other types of 1-4 family homes, for example. However, the Bureau notes, importantly, this data, that informs the analysis of the HOEPA Proposal, are not likely to be representative of rural mortgage transactions. For these reasons, the Bureau requests that interested parties provide data or information on the impact of the proposed rule on consumers in rural areas.

We provide that data above, and repeat it here. As noted by the Bureau, nearly 16 percent of housing units in rural areas are manufactured homes. However, as stated above, this takes into account 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, 16 percent of the housing stock of the rural areas is more than statistically significant, and, based upon data available to us, the percentage of manufactured homes as part of the overall housing stock in rural areas in Texas is much higher than 16 percent. Further, as indicated by MHI, approximately 60 percent of manufactured homes are delivered to rural areas.

In this regard, we note that the Bureau will further consider the benefits, costs and impacts of the HOEPA Proposal and additional proposed modifications before finalizing the HOEPA Proposal. However, we strongly recommend that, since the Bureau has determined it need not make a HOEPA final rule effective by or before January 21, 2014, that it first gather such additional data and propose to interested parties any revision of a HOEPA rule for further review and comment prior to finalizing a HOEPA rule, and delay the effective date of a final HOEPA rule as outlined herein for all manufactured home loans.

We also note, as further support in this regard and based on data available to us, that the combination of the removal of the purchase money exemption and the lowering of the APR and points and fees thresholds under the HOEPA Proposal will expand the coverage of the HOEPA rule to manufactured home loans as currently originated by as much as 75 percent (or more) in some instances. We understand that representatives from the manufactured housing industry met numerous times with Bureau staff prior to the publication by the Bureau of its HOEPA Proposal and shared with it a great deal of detailed information on the manufactured housing industry. However, very little, if any, of the information shared during those meetings appears to us to be reflected in the Bureau’s section 1022(b)(2) review and analysis. In this regard, the Bureau’s section 1022(b)(2) review and analysis as it stands today is flawed with respect to manufactured housing and rural issues and we appreciate that the Bureau will gather additional and relevant data with respect to the manufactured housing industry prior to finalizing a HOEPA rule--as indeed, in our view, it must and should.

Further, the government sponsored enterprises (or GSEs) currently do not support the manufactured housing finance industry in any meaningful or robust way. Moreover, as recognized by the Bureau in its HOEPA Proposal section 1022(b)(2) discussion, HOEPA loans are not marketable in the secondary market. And, most small lenders do not have the capital to hold loans in portfolio. Thus, such loans simply will not be made by small businesses, further impacting such small financial services businesses and the other small businesses that rely on them for a source of financing for their homes, as well as further constraining consumers’ access to credit.

We also believe that these results will have a disproportionate seriously adverse impact on rural areas. Without revisions to the HOEPA Proposal as discussed herein, there will also be, in our view, an impact on current manufactured home owners and their communities as constrained credit will limit resale opportunities of their homes, and thus the value of their homes.

As explained in more detail above, in our view, the Bureau's section 1022(b)(2) review and analysis fails to take these factors into account.

Given that: (i) manufactured housing finance is primarily comprised of purchase money lending, (ii) HOEPA as originally enacted was designed to and focused on and address issues in the refinance and not purchase money mortgage market, (iii) manufactured home loans are overwhelmingly and predominately fixed-rate, fully amortizing loan without exotic features, (iv) the shortcomings of the Bureau's section 1022(b)(2) analysis with respect to manufactured housing issues; and (v) the severely adverse impacts that the HOEPA Proposal will have on the manufactured housing industry in Texas (and beyond) if not revised; we request that the Bureau exercise its authority and exempt from a HOEPA final rule any and all loans secured in whole or in part by a manufactured home.

Higher Thresholds; Mortgage Originator Compensation Exemption from Points and Fess

In the alternative, we respond to the Bureau's request for comments or data specifically on the separate percentage point trigger for first-lien transactions that are secured by a dwelling that is personal property and for which the total loan amount is less than $50,000, and whether any adjustment to the percentage point or the total loan amount for such first-lien transactions would better protect consumers or is warranted by the need for credit. As noted above, 38.4 percent of owner-occupied manufactured housing units in Texas units cost less than $100,000. And, nationwide, we understand that over 71 percent of all new manufactured homes cost $125,000 or less.[10] Lower balance loans of course are impacted more greatly by lower HOEPA thresholds.

If the Bureau does not provide a permanent or temporary exemption from a final HOEPA rule for all or any class of manufactured home loans purchase money or otherwise, as requested above, we request that the Bureau increase the APR threshold to at least 10 percentage points over APOR (or higher), and increase the points and fees threshold to the greater of 5 percent or $5,000 under a final HOEPA rule, and clearly and specifically exclude manufactured home retailer sales compensation from the definition of points and fees and finance charges under the HOEPA thresholds and triggers, and increase the applicable trigger amount from less than $50,000 to less than $125,000.

While we note above 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 trust that the Bureau will recognize, upon further and more coordinated reflection of its inter-related proposals, that such a definitional exclusion is highly situational and fact-specific, and thus, as a practical matter, un-workable. We believe that a broader and bright line exclusion from the definition of points and fees for any compensation paid to a manufactured home retailer or its employees would achieve a workable compliance standard for the industry and not have the chilling effect on legitimate business activity that the proposed approach in this area will have.

As explained above, based on data available to us, the combination of the removal of the purchase money exemption and the lowering of the APR and points and fees thresholds under the HOEPA Proposal will expand the coverage of HOEPA to manufactured home loans as currently originated by as much as 75 percent (or more) in some instances. While increasing the thresholds as requested above will alleviate this impact somewhat, it will not eliminate it. Thus, we repeat our request that the Bureau gather

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[10] According to data from MHI, the average sales price of a new manufactured home is approximately $60,000 and 60% of manufactured homes are located in rural areas. According to MHI and U.S. Census data, manufactured housing provided 47% of all new homes under $150,000 sold in 2011 and 72% of new homes sold under $125,000.

additional information specific to the manufactured housing industry and expand and more thoughtfully consider and complete its required section 1022(b)(2) analysis with respect to manufactured housing and rural issues before implementing an effective date of a finalized HOEPA rule applicable to manufactured housing finance.

Conclusion

Overall, we commend the CFPB on a comprehensive regulatory proposal. As noted above, however, unless revised, the HOEPA Proposal will have a severe and dire impact on the state of Texas, its small businesses, rural areas and consumers' access to housing credit. We respectfully request that the Bureau gather more data, review its analyses with respect to the manufactured housing industry, and until such further work and consideration is completed, provide an exemption from a final HOEPA rule for manufactured home loans.

We trust that the CFPB will find our comments to the HOEPA Proposal both helpful and informative.

Very truly yours,

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