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: Bureau Docket No. CFPB–2012–0032 or RIN 3170–AA26 [2012 ECOA (Regulation B) Appraisal Proposal]

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") ECOA (Regulation B) Appraisal 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

[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)

Community Affairs, there 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) 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 and Requests

With these Texas state-specific facts as a backdrop, we indicate herein that the Bureau's ECOA Appraisal Proposal should be revised in two respects, and its effective date delayed, all as further described, below.

First, its scope should be revised to conform to and be "harmonized" with the scope of the Bureau's (and the Agencies') TILA Appraisal for Higher-Risk Loan Proposal (see CFPB-2012-0031). To do that, we recommend that, as in the Agencies' TILA Appraisal for Higher-Risk Loan Proposal (see 77 Fed. Reg. 54765), this ECOA Appraisal Proposal of the Bureau also not apply to manufactured home

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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%.

"chattel only" loans.[8] In addition, and for reasons advanced in by TMHA in its comments to the Agencies (including the Bureau) in connection with the TILA Appraisal for Higher-Risk Loan Proposal also submitted on this date, we recommend that the scope of both that rule and of this ECOA Appraisal Proposal also exclude land/home manufactured home loans, and, failing that, that it also exclude land/home manufactured home loans if: (a) the amount of such loan is under $125,000; and/or (b) the home is situated in a rural area.

Second, in addition to "harmonizing" the scope of two appraisal-related Bureau (and Agency) Proposals, the TMHA commends the Bureau for excluding the following from the definition of the "valuations" that must be disclosed to the consumer under the requirements of the rule: "manufacturers' invoices for mobile homes." See Proposed Official Interpretation—Supplement I to Part 1002, Section 14(b)(3), page 51. (Please note that "mobile homes" should be referred to, instead, as "manufactured homes," as that term is defined in 24 C.F.R. 3280.2). That exclusion for manufactured homes should be retained in the final rule, for the reasons stated in the preamble to the ECOA Appraisal Proposal. However, that exclusion also should be expanded so that it includes as well loan amount calculations that indirectly would disclose the manufacturer's invoice price of the home, as further explained below.

Third, with respect to the effective date of the ECOA Appraisal Proposal, the THMA, though acknowledging the desire of the Bureau to make this rule effective prior to the effective date of its 2012 TILA-RESPA Integrated Disclosure Proposal, respectfully recommends that that not occur, so that those required to comply with the requirements of this ECOA Appraisal Rule (and particularly the Texas small businesses that are members of the TMHA (see above)) can avoid the considerable costs associated with making two consecutive changes in this area: the first to conform to the requirements of this rule, were it made effective before the Integrated Disclosure Proposal becomes effective, and the second when that Disclosure Proposal becomes effective.

Coordinating the effective date timing of these two appraisal-related rules would appear to be particularly compelling in this instance, where the additional benefits to consumers from the changes that would be made as a result of the implementation of the ECOA Appraisal Proposal, though important enough to command the attention of the Congress in Section 1474 of the Dodd-Frank Act and of the Bureau through this proposed rulemaking, are nevertheless relatively small when compared with the considerable and unnecessary burden imposed upon small Texas-based businesses that then would need to revise their systems, training, procedures and controls, twice, rather than once, to be in compliance.

Harmonized Appraisal Proposals

In its comments submitted concurrently with these comments, to the Agencies (including the Bureau) with respect to the TILA Appraisal for Higher-Risk Loan Proposal, the TMHA noted the importance, in that context and under that proposed rule, of preserving the exclusion from its scope of "chattel only " ("home only") manufactured home loans. Those TMHA comments also urged, for reasons described in them, that that exclusion include as well all land/home manufactured home loans, or, failing that, and particularly in light of its adverse impact in Texas (see below), of land/home

[8] 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.

manufactured home loans if: (a) the amount of such loan is under $125,000; and/or (b) the home is situated in a rural area.

We do not repeat those comments here. Respectfully, they apply with equal force to both sets of these appraisal-related requirements. What we do stress here, however, and what the Bureau also acknowledges is a significant policy goal of its own (see ECOA Appraisal Proposal, page 23), is the critical importance of all of these appraisal-related requirements being harmonized."

The Bureau, in the preamble to this ECOA Appraisal Proposal, expressly refers to and acknowledges the concurrent publication of its' (and the Agencies') closely related TILA Appraisal for Higher-Risk Loan Proposal. That Proposal rightly excludes chattel only (home only) manufactured home loans. This ECOA Appraisal Proposal neither incorporates that exclusion, nor acknowledges its existence. That should be fixed; both final rules should include it. This is classic case where both of these proposals directly "intersect" (page 10). We have, as urged by the Bureau (page 11), viewed these two proposals, "together." Viewed together, they need to cover the same issues in the same way with the same scope.

That also means, respectfully, that, to the extent that the TMHA alternative recommendations in its comments on this point on the TILA Appraisal for Higher-Risk Loan Proposal (that favor exclusions for land/home manufactured home loans under $125,000 and/or in rural areas), are adopted in that rulemaking, they should be adopted in this one as well.

An Expanded Exclusion for Loan Amount Disclosure Invoice-Related Manufactured Home Valuations

The proposed definition of the "valuation" that must be disclosed under the proposed rule is an expansive one. It includes "any estimate of the value of a dwelling developed in connection with a creditor's decision to provide credit." ECOA Appraisal Proposal, page 51. Accordingly, given its broad scope, the proposed exclusion to the term, for manufactured home invoices (see proposed Official Comments, page 51), is welcomed, appropriate, and fully supported by the TMHA.

However, in order for that exclusion to be fully effective, that exclusion should be expanded so that it includes as well loan amount calculations that indirectly would disclose the manufacturer's invoice price of the home. That is so because, for purposes of calculating the maximum loan amount for loans to be insured under the FHA Title I manufactured home loan program, and more generally for conventional chattel only and land/home manufactured home loans as well, that maximum loan amount calculation is based, in significant part, on the invoice (or wholesale or base price) of the home. See HUD Title I Letter-481. And, consumers generally understand this as well.

As a result, the disclosure of the maximum loan amount calculation effectively serves as a "proxy" for the manufacturer's home invoice price. The expansive position of the Bureau with respect to impermissible "proxies" for a loan's terms, as expressed in its concurrently proposed TILA Loan Originator Compensation Proposal (CFPB-20120-0037; see Section 1026.36(d)(1)), if followed with respect to this ECOA Appraisal Proposal as well (as it should given the Bureau's stated emphasis on "harmonizing" its related final rules, that need to be read "together"), argues persuasively, in the view of the TMHA, for expanding this valuation exclusion expressly to include information concerning such loan amount calculations for manufactured homes.

We appreciate this opportunity to comment on this ECOA Appraisal Proposal.

Very truly yours,

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