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–2012–0031 or RIN 3170–AA11 [2012 TILA Appraisals for Higher-Risk Mortgage Loans]

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551
Re: Board Docket No. R-1443 or RIN 7100-AD90

Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429
Re: RIN 2590-AA58

Alfred M. Pollard, General Counsel
Attention: Comments
Federal Housing Finance Agency, Eighth Floor
400 Seventh Street, Mail Stop 2-3
Washington, DC 20024
Re: RIN 2590-ASA58

Mary Rupp, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428
Re: RIN 3133-AE04

Office of the Comptroller of the Currency
250 E Street, SW, Mail Stop 203
Washington, DC 20219
Re: OCC 2012-0013/Appraisals for Higher-Risk Mortgage Loans

Dear Ladies and Gentleman:

Please find the comments of the Texas Manufactured Housing Association (TMHA) in response to the joint proposal under TILA with respect to Appraisals for Higher-Risk Mortgage Loans (the TILA 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 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

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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)
[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%.

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.

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 TILA Appraisal Proposal appropriately and properly provides for the exclusion of "chattel" ("home only") manufactured home loans from the requirements of the rule. Thus, it provides that: "Notwithstanding paragraph (a)(2)(i) . . . a *higher-risk mortgage loan* does not include . . . (C) A loan secured solely by a residential structure." See 77 Fed. Reg., at 54765, 54766; Question 11, 77 Fed. Reg. 54733.

However, we also respectfully request that manufactured housing "land/home" manufactured home loans similarly and also be excluded from the requirements of the rule. See Question 14, 77 Fed. Reg. 54733. ("Chattel only" loans are secured only by the manufactured home, as personal property, and not by 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.)

To the extent that, contrary to our recommendation, all land/home manufactured housing loans are not excluded from the requirements of the rule, we respectfully request that, nevertheless, land/home manufactured home loans be excluded from the rule if: (a) the amount of such loan is under $125,000; and/or (b) the home is situated in a rural area.

Our reasons for supporting the proposed "chattel only" exclusion, and for expanding it to also include all or at least certain "land/home" manufactured home loans, are described below. In brief, however, it is our view that, unless the proposed "chattel only" exclusion is preserved in any final rule, and that exclusion also is expanded to exclude all or at least certain "land/home" manufactured home loans, there will be a serious adverse impact on Texas consumers, Texas-based small businesses, rural areas of Texas and the Texas economy as a whole.

Effective Date Comments

The agencies, citing Section 1400 of the Dodd-Frank Act, intend to finalize this rule by January 21, 2013, making them effective, we assume, within the 12 month period thereafter. See 77 Fed. Reg. 54724.

We appreciate that the agencies understand that the final rule, when published, will require the programming of new forms and disclosures, revisions to software, staff training, and other changes, and that some (we would submit many) companies also will need to implement other new requirements under other parts of the Dodd-Frank Act and the multiple related final rules of the Consumer Financial Protection Bureau.

It is, respectfully, our view that, under these circumstances, the final effective date that for the TILA Appraisal Rule need not and should not, otherwise strictly adhere to the formulation and timeline stated in section1400 of the Dodd-Frank Act. Instead, and respectfully, we recommend and request that the effective date of the final rule be extended well beyond the final date stated in Section 1400(c)(1)(B) of the Dodd-Frank Act, so that it does do not become effective until at least 24 months after it is published in final form.

The "Chattel Only" Exclusion

It is our view that the TILA Appraisal Proposal appropriately and properly provides for the exclusion of "chattel" ("home only") manufactured home loans from the requirements of the rule. Thus, it provides that: "Notwithstanding paragraph (a)(2)(i) . . . a *higher-risk mortgage loan* does not include . . . (C) A loan secured solely by a residential structure [emphasis original]." See 77 Fed. Reg., at 54765, 54766; Question 11, 77 Fed. Reg. 54733.

That such chattel only manufactured home loans are excluded under the TILA Appraisal Proposal is appropriate and necessary, as it is in the public interest and promotes the safety and soundness of creditors. See Dodd-Frank Act, Section 1471. The TILA Appraisal Proposal aptly and correctly outlines key reasons why that it is so (77 Fed. Reg. 54733), and we do not repeat them here.

In that connection, however, we do note that there is no broadly available appraisal data for chattel only manufactured home sales or re-sales in Texas. Such sales transactions are not listed in Texas multiple listing services; and they are not generally reported or compiled by manufactured housing retailers, manufacturers, community owners, or individual sellers and purchasers of manufactured homes in Texas.

That lack of comparable sales data--a fatal gap in requiring and preparing the appraisals and valuations described in the TILA Appraisal Proposal--is even more serious when such data are sought in the rural areas of Texas where, as noted above, well over 60% of Texas manufactured homes are located.

For these reasons, among others, the TMHA strongly supports the continued exclusion, as proposed, of "chattel" ("home only") manufactured home loans from the requirements of the rule.

A Land/Home Exclusion

In contrast with its proposed exclusion of chattel only manufactured home loans from the requirements of the TILA Appraisal Proposal, its preamble explains that land/home manufactured home loans are subject to the requirements of the rule, since "appraisals performed by certified or licensed appraisals are feasible." 77 Fed. Reg. 54733.

Respectfully, that is not the case in Texas. Our members report that qualified and trained appraisers, experienced in appraising manufactured homes generally, whether or not sold with land, are few and far between, and, when it comes to rural areas in Texas, not even that. It is not feasible to require appraisals when the qualified appraisers that would be needed to complete them in accordance with the requirements of the TILA Appraisal Proposal cannot be found and are not extant.

Even if a qualified appraiser could be located for a land/home transaction, the lack of comparable sales data and the limited sales volume in many Texas rural areas do not allow for reasonable or accurate home valuation calculations. Sales off retailer lots of homes are not included in typical appraiser data resources such as the Multiple Listing Service (“MLS”). In Texas there is no reliable, updated or even the existence of a comparable sales database for manufactured homes that appraisers could utilize when trying to determine values. A traditional appraisal valuation system does not address the unique nature of manufactured housing sales off retail locations. Any "best efforts" to use traditional appraisal methods fail many costumers, in particular those shopping for new homes off retail lots. Efforts to find geographic land/home sales through avenues such as the MLS create inadequate values on new homes. By not accounting for sales off retail lots, but rather looking to older land/home manufactured home sales, inevitably one is comparing older homes to new homes. This disparity can never be reconciled, especially in the space of manufactured home sales where distinct values can be more easily attributable to the home and the land whereas this is much more difficult in traditional site-built sales. An analogous situation would be one where new automobiles coming straight out the factory have their value based on a model four years old with 45,000 miles that recently sold in a local consumer-to-consumer sale via a classified advertisement in a local newspaper.

In addition, the market place in which manufactured homes are typically sold creates through competition and transparency consumer assurance in proper market value. This reality is because of two factors. First, the retail selling market where, like in all retail markets, competition among retailers ensures accurate home values; and, two, geographic considerations are more clearly separated in a typical land/home transaction than in a site-built purchase.

Prices of homes are advertised, displayed and readily available to consumers. Comparable housing products are many times literally offered on adjacent retail lots, across the street or a short distance away. The sales and buying process for manufactured homes is more akin to the retail experience of purchasing an automobile than the typical site-built purchase. Similar to cars offered on various dealership lots in close proximity to one another where consumers shop comparable products in both close geographic and timely proximity, the retail market for manufactured homes creates accurate consumer understanding of manufactured home values. The nature of a retail market and the high levels of competition among products naturally demands similar types of housing products are priced competitively. Those in the manufactured housing retail business who do not abide by market conditions soon find themselves out of business because consumers purchase better priced similar homes from their down-the-street competitors.

The unique nature of the retail sales market of transportable manufactured homes clearly separates the value associated with the home and the value of the lot where the home will be placed. In many typical site-built home sales the market value of the lot and structure together is so inextricability intertwined it is difficult to separate out each unique value. However, for land/home manufactured homes purchase the values of the homes are clearly evident because of the retail market, and the transportable nature of the home. Additionally, the land for home placement is many times a minor or secondary consideration to overall value, whereas in a traditional site-built sale the physical location of the land can play a much more significant factor in determining the total market value for the land and structure.

Many times the land homes are placed, especially in rural Texas, has relative limited value. Another typical scenario is where the land where a home will be placed is already owned by the prospective home buyer and the buyer chooses to utilize their equity in their lot, even if limited to only a few thousand dollars, as a means of down payment. In Texas, it is also a common occurrence for family owned land in rural areas to be used not only for home placement, but also leveraging equity for down payment assistance. Subdivided family lots carry significantly different values for family members seeking to place a home in close proximity to other family members than what would be attributed value to the same land by general prospective rural home buyers. Thus market conditions, lot values and typical rural market sales and placement create unique conditions in the land/home manufactured housing market necessitating unique treatment when assessing total values; none of which conform to what is thought of as a typical site-built home purchase or appraisal process.

Finally, our members report that where appraisals are required for manufactured home land/home transactions in connection with land/home manufactured home loans to be insured by the FHA, typically cost in the range of $500 to $600. For the almost 40% of Texas homeowners in homes costing less than $100,000 (see above), paying about one-half percent of the home's price simply to have it appraised (again, assuming it is feasible to do so) would be, in the words of the preamble to the TILA Appraisal Proposal, "extremely expensive" relative to its cost . See 77 Fed. Reg. 54733. With over fifty percent of Texas home loan borrowers having total annual income and benefits of less than $50,000 per year (see above), such appraisal costs also could and would be prohibitive for them, resulting in a serious adverse impact on Texas consumers, Texas-based small businesses, rural areas of Texas and the Texas economy as a whole.

Accordingly, and for these reasons among others, the TMHA believes that land/home manufactured homes loans also should be excluded from the requirements of the TILA Appraisal Proposal, as it would demonstrably be in the public interest and promote the safety and soundness of creditors to do so and thus be permitted under Section 1471 of the Dodd-Frank Act.

To the extent that, contrary to our recommendation, all land/home manufactured home loans are not so excluded from the requirements of the rule, we respectfully request that, nevertheless, land/home manufactured home loans be excluded from the rule if: (a) the amount of such loan is under $125,000; and/or (b) the home is situated in a rural area.

According to 2011 Census Bureau data, 72% of new homes sold for under $125,000 were manufactured homes, as were 47% of new homes sold for under $150,000. If land/home manufactured home loans under $125,000 were excluded from the requirements of the TILA Appraisal Proposal, then most manufactured home buyers across the nation, and in Texas, would avoid the unnecessary, extremely expensive, and infeasible requirements of the TILA Appraisal Proposal, and they, and Texas-based small businesses, would not adversely be affected by them.

Thus, if all land/home manufactured home land/home loans are not to be excluded from the requirements of the TILA Appraisal Proposal, the TMHA, in response to Question 14 (77 Fed. Reg. 54773), requests that, if the amount of such loan is under $125,000, it be excluded from the definition of a higher-risk mortgage loan, as permitted under Section 1471 of the Dodd-Frank Act.

In addition, if the manufactured home is situated in a rural area, the TMHA similarly requests that it be excluded from the definition of a higher-risk mortgage loan, as permitted under Section 1471 of the Dodd-Frank Act.

As noted above, the percentage of manufactured homes that are located in rural areas in Texas is greater than 60 percent. The exclusion of such rural manufactured home owners from the requirements of the TILA Appraisal Rule similarly would enable them and the Texas-based small business that serve them to avoid the unnecessary, extremely expensive, and infeasible requirements of the TILA Appraisal Proposal.

In addition, and in that connection, we note that the preamble to the TILA Appraisal Proposal correctly expressly acknowledges that it may be appropriate to exclude such rural borrowers from the "additional appraisal" requirements of the proposed rule (see Question 18, 77 Fed. Reg. 54737). Similar and persuasive reasoning also suggests that excluding such rural manufactured home land/home loans, in their entirety, would be appropriate, and permitted, under the provisions of Section 1471 of the Dodd-Frank Act.

We appreciate this opportunity to comment on the TILA Appraisal Proposal.

Very truly yours,

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