



October 9, 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–2012–0033 or RIN 3170–AA14 [2012 Truth in Lending Act (Regulation Z) Mortgage Servicing Proposal; and Docket No. CFPB-2012-0034 or RIN 3170-AA14 [2012 Real Estate Settlement Procedures Act (Regulation X) Mortgage Servicing 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") Mortgage Servicing Proposals under the Truth in Lending Act (Regulation Z) and the Real Estate Settlement Procedures Act (Regulation X).

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

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 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.

Overview of Comments and Requests

With these Texas state-specific facts as a backdrop, we indicate herein that the Bureau's Mortgage Servicing Proposals, if not revised with respect, particularly, to small servicers of manufactured home "chattel only" loans,⁸ 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 these comments, we focus on the effects of the Mortgage Servicing Proposals on such "chattel only" loans, and not on manufactured housing "land/home" loans (loans that generally are secured by both the home and the real property upon which the home is situated.) We do so, for several reasons.

First, we do so because the effects of the Mortgage Servicing Proposals on those in Texas who service such chattel only loans, and the generally lower income and rural consumers who need and secure such loans, will be especially devastating and severe absent special provisions for small servicers of such loans and their borrowers.

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 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.

Second, we focus on the servicing of chattel only manufactured home loans because the manner in which such small servicers service such loans, and the effects of their servicing practices upon their borrowers, are dramatically different than those of servicers of residential home loans generally and their borrowers, and need not and should not be subject to proposals designed to remedy perceived shortfalls that did not and will not affect them.

Third, we focus on the affects of the Mortgage Servicing Proposals on small servicers of such chattel only manufactured home loans because we think it important that these differences--and the dramatically adverse affects that will ensue for them if the Bureau's Mortgage Servicing Proposals affecting them are not adjusted--be brought squarely to the Bureau's attention, and we are concerned that, given the sweep and scope of the Proposals, others commenting upon them may not or may not have the time, knowledge or ability to, fully effectively to do so.

Fourth, by doing so, we are able to concentrate, in our comments, on aspects of the Mortgage Servicing Proposals that do not arise under, and are not authorized by the Real Estate Settlement Procedures Act (RESPA). That is because, by their terms, all of the Bureau's Mortgage Servicing Proposals made under the authority of RESPA and Regulation X affect only those who service "federally related mortgage loans" as that term is defined in RESPA and Regulation X, and such a loan, by definition, does not include a chattel only manufactured home loan, but instead, includes only a loan that is "secured by a first or subordinate lien on residential real property." See Regulation X, 12 C.F.R. 1024.2(b)(1)(i). See also proposed Regulation X, 12 C.F.R. 1024.31 (proposed definition of "Mortgage Loan").

In confining our comments to provisions of the Mortgage Servicing Proposals that affect chattel only manufactured home loans, however, we do not mean to suggest that similar concerns should not affect and inform the Bureau's thinking as it finalizes its Mortgage Servicing Proposals affecting land/home manufactured home loans arising under RESPA as well as TILA. Those servicers, particularly small servicers, also interact with the mostly rural, mostly lower income consumers who reside in affordable housing--essentially the same borrower population served by and through chattel only manufactured home loans. Similar exemptions or adjustments for them also should be considered by the Bureau as it finalizes its Mortgage Servicing Proposals.

Overview of the Mortgage Servicing Proposal and Effective Date Comments

The Mortgage Servicing Proposal contains nine major categories or topics areas. However, only parts of five of these topics are specifically mandated and directed by Congress under the Dodd-Frank Act. The others were unilaterally created by the Bureau without a specific directive from Congress to do so.

The Bureau states that it plans to finalize its Mortgage Servicing Proposals by January 2013. The Bureau further states its general belief that its final servicing rules should be made effective as soon as possible, and that the Dodd-Frank Act in some cases provides no more than 12 months for implementation.

We appreciate that the Bureau understands that the final servicing rules will require the programming of many new forms, 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 other Bureau proposed rules. And, we appreciate that the Bureau requests comments about how long to provide for implementation of its Mortgage Servicing Proposals, when finalized.

It is, respectfully, our view that, by including in the Mortgage Servicing Proposal suggested changes outside of specific statutory requirements mandated by Congress under Title XIV of the Dodd-Frank Act together with specific statutory changes mandated by Title XIV of the Dodd-Frank, and given the desire,

advisability and need for coordinating the statutorily mandated changes with those proposed changes initiated unilaterally by the Bureau, a final effective date that for these Mortgage Servicing Proposals need not and should not otherwise strictly adhere to the formulation and timeline stated in section 1400 of the Dodd-Frank Act. Instead, and respectfully, we recommend and request that the Bureau use its authority to exempt chattel only manufactured home loan small servicers, and others similarly affected, from any and all requirements otherwise applicable to them well beyond the final date stated in Section 1400(c)(1)(B) of the Dodd-Frank Act, and so that they do not become effective until at least 24 months after they are published in final form.

Additional information about the impact of the changes required by the proposed Mortgage Servicing Rules, particularly upon small servicers of chattel only manufactured home loans, is provided below.

Periodic Statement Requirement/Small Servicer Exemption

Section 1420 of the Dodd-Frank Act generally requires that servicers of closed-end consumer credit transactions secured by a dwelling, including chattel only manufactured home loans, send periodic statements for each billing cycle, and the Bureau proposes to implement that provision through its new Regulation Z Section 1026.41. By its terms, however, the otherwise applicable requirements of this Section with respect to required periodic statements does not apply if, instead, a specified Exemption is applicable. Such a "Small Servicer Exemption" is proposed in Section 1026.41(e)(4).

The TMHA supports the Small Servicer Exemption as proposed in Section 1026.41(e)(4) and further described in related comments in proposed Supplement I to Part 1026, particularly as it applies to such small servicers of chattel only manufactured home loans, for the reasons articulated by the Bureau and by its Small Business Review Panel (Panel) with respect to it, and particularly in light of the characteristics of such small servicers of such chattel only manufactured home loan servicers and the Texas consumers they serve, as described above.

That the Small Servicer Exemption as proposed generally appears to the TMHA to be a workable one when applied to servicers of chattel only manufactured home loans does not mean that it would either be a workable or an appropriate one when applied to the servicers of land/home manufactured home or "stick-built" residential mortgage loans. For such other credit products, a substantially higher loan count threshold as well as an alternative aggregate loan portfolio dollar size would appear to be appropriate and necessary. However, as it appears unlikely that the Bureau will or should establish different Small Servicer Exemptions for different industries, sectors, or credit products, the TMHA believes that, as long as a Small Servicer Exception is retained in the final rule that is no more restrictive than that proposed, when applied to the servicers of chattel only manufactured home loans, that also would be appropriate.

As the Bureau itself articulated the reasons for its proposal of this Small Servicer Exemption (77 Fed. Reg. 57364): "Where small servicers already have incentives to provide high levels of customer contact and information, the Bureau believes that the circumstances may warrant exempting those servicers from complying with the periodic statement requirement. In particular, small servicers that make loans in their local communities and then either hold their loans in portfolio or retain the servicing rights have incentives to maintain "high-touch" customer service models. Affirmative communications with consumers help such servicers (and their affiliates) to ensure loan performance, protect their reputations in their communities, and market other consumer financial products and services. Because those servicers have a long-term relationship with the borrowers, their incentives with regard to charging fees and other servicing practices may be more aligned with borrower interests. These motivations to ensure a good relationship incentivize good customer service, including making information about upcoming payments, fees charged and payment history, and information for distressed borrowers easily available to consumers by other means."

That description--that well-articulated rationale for a Small Servicer Exemption--applies with full and persuasive force to those who service chattel only manufactured home loans for mostly rural, mostly lower income, always affordable Texas manufactured home consumers.

The June 11, 2012 comments of the Panel to Bureau on this point, in Section 8.1 thereof, are particularly apt and persuasive with respect to the need for such a Small Business Exemption from the Mortgage Servicing Proposal provisions related to Periodic Statements. Indeed, the TMHA has estimated certain of the costs of compliance with this proposal as well as certain others for such small servicers of such chattel only manufactured home loans in Texas, in particular, and it shares those estimates below. But, more generally, and as the Panel also found, small servicers (including, we point out, our Members servicing such loans) generally did not engage in the practices that contributed to the mortgage market crisis, and imposing such new and unwanted and unnecessary and costly servicing requirements upon them would make it increasingly difficult for them to remain in their markets and continue to provide affordable home choices to such Texas consumers.

We also believe, in particular, that the proposed 1,000 loan threshold for such an exemption is a fair, balanced and market appropriate one that should not prohibit or inappropriately discourage such small servicers of chattel only manufactured home loans in Texas from providing their consumer-friendly "high-touch" servicing approach to their consumers. Among other things, it would be uneconomical (and unfair to their consumer customers) for servicers of loan portfolios of this small size to attempt to spread their additional costs of compliance across that customer base. The proposed Exemption recognizes that marketplace reality, and appropriately so.

Accordingly, the TMHA respectfully recommends that the Bureau finalize its proposed Small Servicer Exemption, in its proposed form, at least with respect to the servicers of chattel only manufactured home loans.

Application of Loan Payment Requirements/Need for Small Servicer Exemption

Section 1464 of the Dodd-Frank Act generally requires servicers promptly to credit payments from borrowers, generally on the day of receipt, and that provision is implemented in proposed Section 1026.36.

In its preamble to its Mortgage Servicing Proposal, the Bureau expressly seeks comments as to whether the Small Servicer Exemption it proposed in connection with its Periodic Statement Requirements also should be applicable to other provisions in its proposal. See 77 Fed. Reg. 57365 ("The Bureau also seeks comment on whether it would be appropriate to exempt small servicers from other elements of the proposed servicing rules under TILA and RESPA.")

It would be appropriate for the Bureau to do so, particularly with respect to its proposed Application of Loan Payment Requirements referred to above that otherwise would apply to the small servicers of chattel only manufactured home loans.

In addition to the points made above, in support of the proposed Small Servicer Exemption with respect to the Periodic Statement Requirement with respect to chattel only manufactured home loans, which apply with equal force and vigor to the Application of Loan Payment Requirements of the Mortgage Servicing Proposals, we note the following with respect to: (a) the particular cost burdens for such entities if required to comply; (b) the lack of any necessity for imposing such requirements, given the intimate relationship such servicers already have with their borrowers; and (c) the lack of economic incentives for

such servicers to do anything but the right thing for those whose loans they service. Each of these considerations is described in greater detail, below.

Compliance by our small servicers with the Bureau's proposed Application of Loan Payment Requirements would require them either to hire new, technologically proficient and sophisticated employees to deploy new or newly customized systems and procedures, or to contract with third parties to provide such services, as locally based, largely rural, small servicers of chattel only manufactured home loans generally do not employ such personnel today. On a contract basis, it would cost our servicers between \$100 to \$200 an hour to secure such expert assistance (if it is reasonably available and accessible to them at all), and THHA has been informed that it would take between 100 and 200 hours of their time to build or configure the systems and hardware necessary to meet these requirements, or between \$20,000 to \$40,000 for each such small servicer so affected.

In addition, such small servicers would need at least one employee (or an outside contractor) to service the related ongoing IT needs, and develop and program updates as required, and maintain and support such systems and hardware, in addition to having in place personnel and systems to assure at all times that, among other things, necessary and required identity and privacy protections are in place. The TMHA estimates that the cost of these services, on an ongoing basis, would range from \$1,500 to \$8,000 a month.

And, to these costs of compliance there would need to be added the costs of considering, preparing and implementing related changes to small servicer accounting systems, banking practices (including lock box, and electronic check reader and deposit interfaces), internal policies and procedures, employee training and re-training, and other out of pocket expenses.

Small servicers, faced with such unbudgeted and largely unrecoverable costs (from the relatively small number of borrowers whose loans they service), inevitably will need seriously to consider outsourcing such servicing responsibilities to remote, larger servicers who may spread such costs over their larger number of serviced loans.

But, of course, that should be the opposite of what this proposal by the Bureau is seeking to achieve, particularly when, as here, our small servicers already have an intimate relationship with their borrowers, very frequently interacting with them face to face, with incentives fully aligned with theirs to help assure that payments made are very promptly applied (and that they fully understand the current status of their loan accounts).

Finally, it is important for the Bureau to understand and appreciate that our small servicers--particularly small to mid-size owners of land-lease manufactured home communities generally with modest chattel only manufactured home loan origination capabilities) either do not separately charge at all, or charge very little, for the servicing of their loans. And that is particularly the case for what could be called "extremely small servicers," of loan portfolios of 50 to 500 of such loans. Third party servicers, obviously, and of necessity, do impose such servicing charges--indeed, that is among their core reasons for being in that business.

In short, for small servicers (and certainly for extremely small servicers) of chattel only manufactured home loans, imposing unneeded, unwanted, unnecessary and highly costly requirements for such Prompt Statements and the Application of Loan Payments would be, respectfully, the antithesis of protecting the financial interests of such largely rural, largely lower income, always affordable home consumers, and the small servicer entities that fully and responsibly continue to meet their needs. The currently proposed Small Servicer Exemption should be retained and made applicable to both of these particular Mortgage Servicing Proposal requirements.

We appreciate this opportunity to comment upon these Mortgage Servicing Proposals.

Very truly yours,

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