Protect Availability of Financing for Affordable Manufactured Housing

Urge Representatives to Co-Sponsor the *Preserving Access to Manufactured Housing Act*

(May 2013)

BACKGROUND:

Representatives Stephen Fincher (R-TN), Bennie Thompson (D-MS), and Gary Miller (R-CA) have introduced the ***Preserving Access to Manufactured Housing Act*** (H.R. 1779) to reduce regulatory burdens that impede access to affordable manufactured housing finance. The bill would remedy provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) that impact consumer's ability to obtain the mortgage financing needed to purchase a manufactured home.

The legislation would minimize disincentives to serving the financing needs of low- and moderate-income manufactured home buyers. Often, it is these very consumers that are in greatest need of access to both affordable housing finance and technical assistance in the manufactured home-buying process. Without revision, there would remain the very real, unintended consequence of eliminating access to sustainable manufactured housing for millions of families. Specifically, the legislation would:

- Revise the triggers by which small-sized manufactured home loans are considered High-Cost under the Home Ownership and Equity Protection Act (HOEPA)
- Clarify that manufactured home salespersons are not considered mortgage originators under Dodd-Frank, provided they receive no compensation from a creditor, lender or mortgage broker

For additional details on the legislation, including talking points, action needed and issue analysis, see the following information.

ACTION NEEDED:

Manufactured home construction has declined nearly 80 percent in the past decade, which has accounted for more than 160 plant closures, more than 7,500 home sales center closures and the loss of over 200,000 jobs. In addition, thousands of manufactured home customers have been left unable to buy, sell or refinance homes. Without revision to the Dodd-Frank Act, the people who live in manufactured homes and whose livelihood is connected to this industry are at even greater risk.

Preserving access to manufactured housing is an issue of bipartisan concern. Co-sponsorship from Representatives on both sides of the aisle is needed to demonstrate support for this important form of housing. If the manufactured housing market is to avert further constraints in financing, then broad bipartisan support for the targeted changes outlined in the legislation is vital.

Contact your U.S. Representative and request they co-sponsor H.R. 1779 (*Preserving Access to Manufactured Housing Act*). To co-sponsor, Representatives or their staff should contact Erin Bays in Rep. Stephen Fincher's office at 202.225.4714 or erin.bays@mail.house.gov (*a sample letter that you can edit and customize is attached to the Action Alert*).

Over the coming weeks, Senator Sherrod Brown (D-OH) is expected to introduce companion legislation in the Senate. MHI staff will send out additional information and action needed from industry members as it becomes available.

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Preserving Access to Manufactured Housing Act: **HOEPA High-Cost Mortgage Analysis**

The Home Ownership and Equity Protection Act (HOEPA) was originally enacted to curb abusive practices in refinancing and home-equity mortgage loans with high interest rates or fees. Loans that meet HOEPA's high-cost coverage tests are subject to special disclosure requirements, restrictions on terms, and lenders are subject to enhanced Truth in Lending Act (TILA) penalties for violations of the law. Dodd-Frank expanded the types of mortgage loans subject to HOEPA protections to include purchase money loans, which were previously exempt from regulation. Under changes outlined in Dodd-Frank that go into effect January 2014, mortgages on manufactured homes considered personal property are now covered by HOEPA.

Lenders are essentially unable to originate HOEPA "high-cost mortgages" due to the enhanced liability associated with such loans. For instance, if there is a violation in originating a "high-cost mortgage" (i.e., not providing proper disclosures), the lender could potentially be required to forgive the loan, credit the borrower all closing costs and interest paid, and the lender could lose their license.

Dodd-Frank imposes new standards on mortgage lending designed to cure abuses in the real property mortgage market. This has the unintended consequence of limiting the availability of credit for affordable housing, including manufactured homes. The vast majority of small-balance loans used for the purchase of affordable manufactured housing would be unfairly classified as predatory "high-cost mortgages."

While the cost of originating and servicing a $200,000 loan and a $20,000 loan are the same in terms of real dollars, the cost as a percentage of each loan's size is very different. It is this discrepancy, along with differences in the costs of funds—the GSEs do not serve as an active secondary market outlet for manufactured home loans— which causes these smaller-sized loans to violate caps in Dodd-Frank and be categorized as "high-cost" or predatory.

Millions of manufactured home owners will be in jeopardy of not being able to purchase, refinance or sell their home because small-balance manufactured home loans will be effectively regulated out of existence. Due to the increased liabilities and stigma associated with making a "high-cost mortgage," lenders would simply stop making these loans, eliminating a critical source of financing for many of the nation's 8.7 million manufactured home owners.

The terms typically associated with manufactured home loans—namely fixed interest rates, full amortization, and the absence of alternative features (such as balloon payments, negative amortization, etc.)—allow them to satisfy the requirements of what the Dodd-Frank Act would consider conservative and prudent underwriting standards.

Eliminating this important source of financing would unfairly penalize low- and moderate- income homebuyers who: do not qualify for traditional mortgage financing; do not have access to limited government-insured and GSE secondary market programs; or live in rural areas where other sources of affordable rental housing are non-existent and home construction options are limited.

The manufactured housing market is already constrained by the lack of a secondary market outlet, which provides a significant disincentive to originating these loans. The unforeseen consequences of certain provisions in the Dodd-Frank Act, including the HOEPA expansion, would further reduce lending options available to buyers seeking to purhcase manufactured homes.

DODD-FRANK/CFPB HOEPA PROVISONS VS. REVISIONS OUTLINED IN
***PRESERVING ACCESS TO MANUFACTURED HOUSING ACT* (H.R. 1779)**

	Dodd-Frank Act/CFPB Final Rule Provisions	**H.R 1779 HOEPA Provisions**
HOEPA High-Cost Mortgage APR triggers Dodd-Frank Act Sec. 1431(a)(aa)(1)(A)(i)(I)	Mortgage is considered "high-cost" if APR exceeds the Average Prime Offer Rate (APOR) by more than 6.5% or, if the home is considered personal property and transaction is less than $50,000. The APR cannot exceed APOR by more than 8.5%	Amends Dodd-Frank's HOEPA provisions to create tiered trigger structure for personal property transaction under $75,000. Maximum allowable spread (APR vs. APOR) for dwelling-only loans are: *$75,000-$50,000=8.5%* *$50,000-$30,000=10.5%* *$30,000 and less=12.5%* *(with ability for CFPB to raise to 14.5%)*
HOEPA High-Cost Mortgage Points and Fees triggers Dodd-Frank Act Sec. 1431(a)(aa)(1)(A(ii)	For transactions $20,000 or more, points and fees may not exceed 5% of transaction amount; for transactions less than $20,000 points and fees must be the lesser 8% of transaction amount or $1,000 (or other dollar amount as established by CFPB)	Establishes separate points and fees triggers for all dwelling-only transactions under $75,000 and allows lenders to charge the greater of 5% or $3,000

***Preserving Access to Manufactured Housing Act*: Loan Originator Compensation Analysis**

In January 2012, the CFPB issued a final rule implementing Dodd-Frank's loan originator requirements. The rule is effective January 10, 2014. MHI is concerned the definition creates unintended and unwarranted regulatory and compliance risks that arise from the fact that the final rule's definition of loan originator is based on traditional mortgage market roles that do not fully equate with the business model of the manufactured housing industry, including lending and retail sales practices.

The definition of loan originator in the CFPB's final rule excludes employees of manufactured home retailers if they assist a consumer in obtaining or applying to obtain a residential mortgage by preparing residential mortgage loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan, *provided they do not*: take a residential mortgage loan application; offer or negotiate terms of a residential mortgage loan; or, advise a consumer on loan terms (including rates, fees, and other costs).

The final rule provides contradictory and confusing guidance on accurately categorizing manufactured home retail sales activity. As written, CFPB's guidelines would effectively require manufactured home lenders to independently evaluate and police, for every single manufactured home sales transaction, the activity and conversations of individual retailers and salespersons.

Based on this CFPB rule, the only conceivable way for lenders to shield themselves from future liability is to indiscriminately classify all manufactured home sales activity as loan origination activity. The sales commission earned by retailers for selling the home would then be considered loan originator compensation; even if the retailer did not actually engage in loan origination activity.

While lenders and creditors are fully able to accurately account for the activities and compensation of their employees that are considered "loan originators," it is impossible for a creditor or lender to have knowledge of the activities performed by third-party manufactured home retail employees during every sales transaction or to have knowledge of their compensation plans/mechanisms.

Since manufactured home retail sales commission represents a significant portion of the home sales transaction (typically between three and five percent), **virtually every financed new manufactured home sales transaction would be at risk of failing to meet or violating**:

- **Qualified Mortgage criteria**: due to limitations in points and fees that can be charged on a residential mortgage.
- **High-Cost Mortgage triggers established under the Home Ownership and Equity Protect Act (HOEPA)**: that also limit allowable points and fees associated with a residential mortgage loan.

To ensure a sizable disruption in the manufactured housing market does not occur, legislative revision is needed to establish a practical bright-line method of classifying when compensation earned by a manufactured home retailer is or is not a result of home sales activity or loan originator activity.

Manufactured housing retailers and salespeople are fundamentally in the business of selling homes, not originating loans. Under Dodd-Frank, a real estate broker is not considered a loan originator nor is their sales commission considered loan originator compensation, unless they are actually compensated by a lender, mortgage broker or loan originator. A similar distinction is needed for those selling manufactured homes.

Without revision and clarification, there is the potential for every manufactured home sales transaction that involves financing, to fail QM and High-Cost Mortgage guidelines. Due to lender unwillingness to finance transactions that fail QM and High-Cost Mortgage tests, the vast majority of these sales transactions would simply not happen, negatively affecting the mostly low-and moderate-income population that is served by manufactured housing.

For more information, contact MHI Vice President of Government Affairs Jason Boehlert at 703.558.0660 or jboehlert@mfghome.org.

SAMPLE LETTER TO FAX /EMAIL U.S. REPRESENTATIVES URGING THEM TO CO-SPONSOR H.R. 1779
PLEASE COPY LETTER ON TO ORGANIZATION LETTERHEAD

The Honorable [**First Name**] [**Last Name**]
U.S. House of Representatives
Washington, DC 20515

Dear Representative [**Last Name**]:

On behalf of [insert organization name] I am writing to respectfully request you co-sponsor *the Preserving Access to Manufactured Housing Act* (H.R. 1779) sponsored by Reps. Stephen Fincher, Bennie Thompson and Gary Miller. This legislation would protect the availability of financing for affordable manufactured housing, a critical resource for nearly nine million low- and moderate-income families across the country.

Earlier this year, through a Dodd-Frank-required rulemaking, the Consumer Financial Protection Bureau (CFPB) expanded the coverage of the Home Ownership and Equity Protection Act (HOEPA) to include all purchase loans—including mortgages on manufactured homes.

Under these guidelines, effective in January 2014, a large percentage of small-balance loans used for the purchase of affordable manufactured housing would be unfairly classified as predatory and high-cost. Due to the increased lender liabilities associated with making and obtaining a HOEPA high-cost mortgage, it is unlikely that these loans would be offered to homebuyers, denying access to necessary credit for both new and existing manufactured homes.

Eliminating this important source of financing would unfairly penalize low- and moderate-income homebuyers who may not qualify for traditional mortgage financing needed for single family home ownership; do not have access to limited government-insured and GSE secondary market programs; or live in rural areas where affordable rental housing is scarce or non-existent. Additionally, millions of families could see the equity they have diligently built up in their manufactured homes wiped out because lenders would be unwilling to provide the financing needed for resale.

The *Preserving Access to Manufactured Housing Act* would amend the thresholds by which designated small balance manufactured homes are classified as high-cost under HOEPA while maintaining the consumer protections from predatory lending practices in Dodd-Frank.

The bipartisan legislation would also clarify that manufactured home retailers and salespersons would not be considered loan originators unless they receive compensation from a lender, mortgage broker or loan originator. The new CFPB definition of a loan originator, also effective in January 2014, is based on traditional mortgage market roles that do not equate with the business model of the manufactured housing market, including lending and retail sales practices. Without this clarification, lenders would likely be unwilling to finance manufactured home loans, negatively affecting creditworthy low- and moderate-income borrowers that rely both on affordable manufactured housing and the ability to access financing.

Over the past decade, the manufactured housing industry has faced significant challenges: an 80 percent decline in new home production; closure of more than 160 plants; and the loss of more than 200,000 jobs. A growing trend of regulations unattuned to this market, threaten to put those living in manufactured housing and those whose livelihood is connected to the industry at further risk. [**IF POSSIBLE, INSERT STATE SPECIFIC MANUFACTURED HOUSING DATA RELATED TO NUMBER OF MANUFACTURED HOMES, INDUSTRY PRESENCE AND JOBS CREATED BY THE INDUSTRY**]

It is for these reasons I urge you to co-sponsor H.R. 1779. To co-sponsor, contact Erin Bays in the office of Rep. Stephen Fincher at 202.225.4714. Thank you for your consideration of this request.