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DATE: July 6, 2010
SUBJECT: Summary of Dodd-Frank Wall Street Reform and Consumer Protection Act –
As it Affects Manufactured Housing

There are two titles within the Dodd-Frank Wall Street Reform and Consumer Protection Act of primary interest to the manufactured housing industry: **Title X – Consumer Financial Protection Act** and **Title XIV – Mortgage Reform and Anti-Predatory Lending Act**. Only these titles mention manufactured housing and/or the SAFE Act.

Summary of Titles X & XIV as they Affect Manufactured Housing

Title X creates the Bureau of Consumer Financial Protection (the Bureau). All of HUD's consumer protection functions and powers and duties under SAFE are transferred to the Bureau.¹

Title X contains an exclusion for retail sellers of manufactured homes.² Retail sellers of manufactured homes who perform typical sales activities will not be subject to the authority of the Bureau. The exclusionary language provides: to the extent retailers limit their activities to (1) acting as an agent or broker for a buyer of a manufactured home; or (2) facilitating the

¹ §1061(b)(7)

² The Director may not exercise any rulemaking, supervisory, enforcement, or other authority over a person to the extent that

(A) such person is not described in paragraph (2); and

(B) such person

(i) acts as an agent or broker for a buyer or seller of a manufactured home or a modular home;

(ii) facilitates the purchase by a consumer of a manufactured home or modular home, by negotiating the purchase price or terms of the sales contract (other than providing financing with respect to such transaction); or

(iii) offers to engage in any activity described in clause (i) or (ii). §1027(c)

Paragraph 2 provides: A person is described in this paragraph to the extent that such person is engaged in the offering or provision [sic] of any *consumer financial product or service* **or** is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H [this includes the SAFE Act]. §1027(c)(2).

A consumer financial product or service is (i) extending credit and servicing loans, including acquiring, purchasing, selling, brokering, or other extensions of credit; or

(ii) extending or brokering leases of personal or real property that are the functional equivalent of purchase finance arrangements, if (I) the lease is on a non-operating basis; (II) the initial term of the lease is at least 90 days; and (III) in the case of a lease involving real property, at the inception of the initial lease, the transaction is intended to result in ownership of the leased property to be transferred to the lessee, subject to standards prescribed by the Bureau. §1002(5) & (15).

purchase of a manufactured home by negotiating the purchase price or terms of the sales contract (*other than providing financing with respect to such transaction*), the Director of the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority over the retailer.³

The Bureau will have the interpretive, rulemaking and enforcement power over the SAFE Act. However, this exclusion for retailers suggests that the Bureau will not have the authority or power to interpret the SAFE Act to apply to retailers who engage in the typical sales activities described above.⁴

The exclusion is ineffective if the retailer offers to provide or provides a “consumer financial product or service”,⁵ or is subject to “any enumerated consumer law or a law transferred to the Bureau.”⁶ So, in order for the retailer to maintain the exemption from Bureau (and the SAFE Act), the retailer must not engage in the activities that cause a person to be subject to the SAFE Act. In other words, if the retailer takes an application *and*⁷ offers or negotiates the terms of a residential mortgage loan as defined in the SAFE Act, the retailer will subject to the jurisdiction of the Bureau.

In addition, Title X amends certain sections of the SAFE Act to replace references to Secretary of HUD and the Federal Agencies with the Director of the Bureau.⁸ The only substantive change to the SAFE Act gives the Bureau the power to establish minimum net worth requirements and bonding requirements for mortgage loan originators. Title X does not change the definition of mortgage loan originator or the definition of residential mortgage loan as they appear in the SAFE Act.

Title XIV – Mortgage Reform and Anti-Predatory Lending Act.

Title XIV amends many federal consumer laws, including the SAFE Act,⁹ Truth in Lending, and RESPA. The amendments to the SAFE Act are technical in nature and replace references to the Secretary of HUD with the Director of the Bureau. The only substantive change is the new authority of the Bureau to promulgate regulations setting minimum net worth or surety bond requirements for mortgage loan originators.

The amendments to Truth in Lending add a definition of mortgage loan originator (TILA currently does not define a mortgage loan originator). The purpose this new definition is to

³ §1027(c)

⁴ (1) acting as an agent or broker for a buyer of a manufactured home or (2) facilitating the purchase of a manufactured home by negotiating the purchase price or terms of the sales contract. §1027(c)

⁵ A consumer financial product or service means (i) extending credit and servicing loans, including acquiring, purchasing, selling, brokering, or other extensions of credit; or (ii) extending or brokering leases of personal or real property that are the functional equivalent of purchase finance arrangements, if (I) the lease is on a non-operating basis; (II) the initial term of the lease is at least 90 days; and (III) in the case of a lease involving real property, at the inception of the initial lease, the transaction is intended to result in ownership of the leased property to be transferred to the lessee, subject to standards prescribed by the Bureau. §1002(5) & (15).

⁶ Federal consumer financial law means the provisions of Title X, the enumerated consumer laws (§1002(12): AMPTA, ECOA, FCRA, HOPA, FDCPA, section of GLB, HMDA, RESPA, SAFE, TILA), the laws for which authorities are transferred under subtitles F and H (i.e., SAFE, TILA, RESPA, etc.), and any rule or order prescribed by the Bureau under Title X. §1002(14)

⁷ We use the “and” since it is the SAFE Act at issue and not the model law or any state law.

⁸ §1100

⁹ §1100

describe the new obligations of individual mortgage loan originators to the consumer under TILA. As amended, TILA will define mortgage loan originator more broadly than the SAFE Act. This leaves us with two varying definitions of mortgage loan originator under federal consumer protection laws.

The term ‘mortgage originator’ in TILA:

(A) means any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain:

(i) takes a residential mortgage loan application;

(ii) *assists a consumer in obtaining or applying to obtain a residential mortgage loan;*¹⁰ **or**

(iii) offers or negotiates terms of a residential mortgage loan.¹¹

(B) includes any person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in subparagraph (A).¹²

Excluded from the definition of a mortgage loan originator are (i) persons who perform purely administrative or clerical tasks;¹³ and (ii) an *employee of a retailer of manufactured homes* who does **not** take residential mortgage loan applications, offer or negotiate terms of a residential mortgage loan, or advise a consumer on loan terms (including rates, fees, and other costs).¹⁴

This limitation on the exclusion does not carve out all of the activities described in “assisting a consumer in obtaining or applying for a residential mortgage loan.” This suggests that a retailer may prepare residential loan packages and collect information on behalf of the consumer without falling within the definition of a mortgage loan originator under TILA.

The amendments to TILA also change the definition of a residential mortgage loan (as used in TILA). These changes do not affect the definition of a residential mortgage loan under the SAFE Act. As amended, a residential mortgage loan for TILA compliance purposes will mean: any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling.¹⁵

Most significant is that the definition is revised to remove reference to purchase money security interest retained in the consumer’s principal dwelling. It appears to be Congress’ intent that TILA will apply to both purchase money and non-purchase money transactions.

¹⁰ A person ‘assists a consumer in obtaining or applying to obtain a residential mortgage loan’ by, among other things, advising on residential mortgage loan terms (including rates, fees, and other costs), preparing residential mortgage loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan. §1401(cc)(4).

¹¹ TILA uses the disjunctive “or” and the SAFE Act uses the conjunctive “and”.

¹² §1401(cc)(2)

¹³ Administrative or clerical tasks is not defined.

¹⁴ §1401(cc)(2)(C)

¹⁵ §1401(cc)(5) and Reg Z 226.3(24)

If a person is a mortgage originator for TILA purpose, he or she will be subject to new origination standards of care, such as consideration of ability to repay, limitations on origination fees, restrictions on steering, prohibition on abusive or unfair lending practices, mischaracterizing the credit history of a consumer or the loans available to the consumer.¹⁶

Summary - Conclusion

Retail sellers are exempt from the jurisdiction of the Bureau as long as the retailer limits its activities to traditional sales activities: *acting as an agent or broker for a buyer of a manufactured home; or facilitating the purchase of a manufactured home by negotiating the purchase price or terms of the sales contract.* If exempt from the jurisdiction of the Bureau, it is our opinion that retail sellers are also exempt from the SAFE Act because the Bureau does not have the power to interpret the SAFE Act to apply to retail sellers engaging solely in these traditional sales activities.

Retail sellers who engage in traditional sales activities, prepare residential loan packages, and collect information on behalf of the consumer and are not mortgage originators under TILA and will not be subject to the new consumer protection provisions of TILA.

¹⁶ §1403