

SUMMARY AND DESCRIPTION OF PROPOSED LEGISLATIVE CHANGES

HIGH-COST LOANS (amend HOEPA triggers)

What is the issue?

The Dodd-Frank Act significantly broadened the scope of loans which will be considered “high-cost” loans. Due to the increased liabilities, responsibilities and stigma associated with making and obtaining a HOEPA “high-cost mortgage,” it is likely that a majority of these loans would not be made. Potentially millions of families could see the equity they have diligently built in their home effectively wiped out because lenders would be unwilling to provide the financing needed to sell them. Lenders are not interested in making high-cost loans due to the enhanced liability associated with such loans. If there is a violation with originating such a loan (i.e., not giving the proper disclosure) the borrower essentially gets a free loan, and the lender must credit the borrower all closing costs and all interest paid to date and a lender could lose their license.

Many of the new regulations that would be imposed on mortgage lenders by the Dodd-Frank Act are designed to curtail questionable lending practices such as zero down payment loans, balloon notes, and stated income loans, which helped bring about the recent decline in the housing market. While the manufactured housing industry and manufactured homeowners played no role in this decline and for the most part maintained prudent underwriting standards, the Act would unfairly lump small balance loans used to purchase affordable manufactured housing into the same category as subprime predatory site-built mortgages.

What impact does this have on the manufactured housing industry?

The Dodd-Frank Act was drafted so broadly without regard to the uniqueness of the manufactured housing industry so that the majority of manufactured home loans will be deemed “high-cost” loans. Such designation will restrict access to affordable manufactured housing financing for low- to moderate-income families. An internal analysis of Clayton Homes lending activities yields similar results. Of all loans made year-to-date, more than 50 percent would be classified as “high-cost mortgages” under the HOEPA revisions outlined in the Dodd-Frank Act.

How can we fix it to curb its impact on low- to moderate-income homeowners?

The definition/criteria for a high-cost loan should be amended so that small-balance manufactured home loans are not discriminated against simply because they are low balance and their interest rates are comparatively greater than on site built homes. Such higher rates are based on the cost of funds to manufactured lenders (due to their lack of access to the secondary market), servicing costs, and risk costs because manufactured home buyers often have lower credit scores.

SAFE ACT (amend definition of mortgage originator)

What is the issue?

The manufactured housing industry also has concerns over the lack of clarity provided in implementing the SAFE Act. The SAFE Act was designed to enhance consumer protection and reduce fraud by requiring states to establish minimum standards for licensing mortgage loan originators.

There has been substantial confusion among states in applying the SAFE Act to manufactured home retailers and their salespersons; those financing the sale of their own manufactured homes; and, those engaging in a minimal level of loan origination.

Prior to enactment of the SAFE Act (or issuance of final federal regulations), states began adopting versions of a model/uniform act. HUD issued a final rule in July 2011 that provides some regulatory clarification in recognizing the delineation between the treatment of individuals who undertake the sale of manufactured homes and individuals who engage in the loan origination business, but uncertainty in application of the rule still exists.

What impact does this have on the manufactured housing industry?

The process of purchasing a manufactured home has some substantial differences from purchasing a site-built home. The ability of a manufactured home retail salesperson to provide key technical assistance in the home buying process absent the risk of being arbitrarily classified as a mortgage loan originator for purposes of the SAFE Act is critical.

In addition, due to the limited financing options available to manufactured home buyers, the ability of retailers and sellers of manufactured homes to provide buyers with adequate information regarding lending options available or to allow manufactured homeowners to finance the sale of their own homes is critical to preserving the availability of manufactured homes as an affordable housing source.

How can we fix it to curb its impact on low to moderate-income homeowners?

Additional statutory guidance is necessary to ensure that individuals who solely assist and aid customers in the manufactured home buying process are not categorized as loan originators for purposes of the SAFE Act.