

MHOAA



Manufactured Home Owners Association of America

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Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 Seventh Street, S.W., Room 10276
Washington, D.C. 20410-0500

RE: Docket No. FR-5271-P-01

SAFE Mortgage Licensing Act: HUD Responsibilities under the SAFE Act

Dear Office of General Counsel:

We appreciate the opportunity to comment on the Department of Housing and Urban Development's (HUD) Proposed Rules to Implement the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) (12 U.S.C. §§ 5101-5113). We are the Manufactured Home Owners Association of America (MHOAA). MHOAA is the only national organization that represents the 10 million home owners who live in 50,000 resident-owned or lease-land communities across this nation and has been doing so since 1994. We currently represent over 20 state-wide home owner associations that are working in their states and at a national level to improve the economic opportunities of those living in manufactured home communities, two-thirds of whom are of low or modest incomes. Our homes are often our one major asset.

Assets are the foundation for promoting long-term economic opportunity for Americans. For the past few generations, homeownership has been the bedrock of household financial assets. The value of a home is the most significant source of wealth for most low and middle-income households. For 17 million Americans, the path to the American Dream includes a manufactured home. Today's manufactured-housing market offers a high-quality and affordable entry into asset building for many families at a cost of less than half the average square-foot cost of a site-built home. Manufactured housing represents 66% of the new affordable housing produced in the United States. In fact, 26% of low-income homeowners in rural areas and 12% of low-income homeowners nationwide own a manufactured home. If manufactured homes were not considered, the nation's homeownership rate would fall by 5 percentage points.

A Historical Review

Sixty years ago our communities began as rental site for "trailers" or "mobile homes" and that is what they were. The home purchase costs were low and so was the risk. They were financed like automobiles and were mobile enough to be relocated. If you didn't like the rent, the rules or the landlord, you could hook the trailer to the car and go. Titling of homes as automobiles or chattel made sense.

Over the next 20 years tens of thousands of manufactured home communities were developed nationally, enabling many families and seniors to enjoy their homes and communities at reasonable cost. As this was happening our homes grew more and more expensive and less mobile.

During the period in which FHA offered Title I financing sufficient to purchase manufactured homes in land-lease communities, their popularity skyrocketed. In today's world, there are very few Title I lenders. Until recently, Title I loan limits wouldn't cover the cost of a modern homes. Since the primary chattel lender, Green Tree Financial, went through a meltdown, little financing is generally available. As a result, the financing available to manufactured home purchasers today is through "captive" loan programs offered by home dealers or community owners. The primary purpose of these loans is not to serve homeowners but rather to sell homes and fill spaces in communities. Manufactured home buyers are directed to these loans by salesmen in the same way as new and used cars.

Since these homes are not considered real property in most states, and certainly not when they are on sales lots unconnected to the land, no RESPA disclosures are required, no appraisal based on comparables takes place, and no realtor advises the Buyer.

For homes on leased land there are numerous other factors that affect a home's value and financing options. A primary driver of this is land-tenure security. Not surprisingly, if a home's land-tenure is not secure, that adversely affects its value and the ability to resell. One study by the University of New Hampshire's Carsey Institute found that homes in resident-owned communities are more likely to appreciate in value than homes in investor-owned communities. Controlling for other factors, like quality of construction and foundation systems, this was due largely to two factors: differences in land-tenure security and access to reasonably priced financing.

Low-income homebuyers need to be presented with fair information and disclosures about financing choices. They need to deal with licensed professionals who are trained and certified as mortgage loan professionals and not as car salesmen. A manufactured home is a home not a vehicle.

In many transactions involving manufactured housing, the Buyer gets no title and no "loan" at all, but an installment sales contract from a dealer or maybe a contract for a deed from a community owner. These are essentially mortgages staged to look like simple purchase contracts.

HUD should not make exceptions for the manufactured housing industry. Do not let the industry tell you these are less than residential mortgages. The industry, which represents community owners, manufacturers and dealers, as well as lenders, will try to convince you that they do not profit from steering homeowners to loan products even though the lenders are very much integrated into their business model.

Section 3400.103(c) (1) - Takes an Application-

Do not loosen or broaden the exception set forth in the preamble of the rules. In its preamble HUD clarifies that "takes a residential mortgage loan application" does not include an individual whose only role with respect to the application is physically handling a completed application form or transmitting a completed form to a lender on behalf of a prospective borrower. This is intended to exempt secretarial staff. It should not exempt salesmen, dealership staff, or community owner staff who are intimately involved in the SELLING, and therefore necessarily, the financing of home purchases.

Section 3400.103(c) (2) - Offers or Negotiates

Examples of Offers or Negotiates.

In its proposed rules HUD provides three examples of offering or negotiating terms of a mortgage loan: (a) presenting mortgage loan terms to a borrower for acceptance; (b) communicating directly or indirectly with a borrower for purposes of reaching an understanding about prospective loan terms; or (c) recommending, referring, or steering a borrower to a particular lender or set of loan terms, in accordance with a duty to or incentive from any person other than the borrower.

"Mortgage loan terms" needs to be clarified to include chattel mortgages, installment sales contracts and contracts for deed on manufactured homes.

The SAFE Act must apply to the industry's captive loan programs and non-captive loan programs. In these programs the sales agent is also acting as an agent for the lender or facilitates the lending to serve its own business needs and not the interests of the Buyer. There are plenty of incentives for manufactured home sales agents to engage in the same misconduct seen in the rest of the residential mortgage industry:

- a. The desire to sell a manufactured home for gain or continued employment;
- b. The commission resulting from the sale of a manufactured home, whether or not it is the same commission for cash or financed transactions, since it will often be necessary to making the sale happen (whatever it takes to get a commission, not what's good for the Buyer);
- c. A sales person's salary;
- d. A pre-arranged agreement between the retailer or sales person and the financing source with regard to available financing and underwriting guidelines;

Loan Processor. Section 3400.23 of the proposed rule provides that a loan processor is an individual who performs his or her duties at the direction of and subject to the supervision and instruction of a state-licensed loan originator. We feel that that supervisor is intended to be the individual's actual supervisor in an employment situation, as this is aimed at support staff and not to individuals acting independently.

De Minimis Exemption.

We encourage HUD **not** to consider a de minimis exception for individuals who are in the business of selling homes, even if their sales are few in any given year. A small community is not motivated by the same incentives as a mortgage

lender. A community is motivated to sell any vacant homes it may own, to collect monthly ground rents, and keep occupancy levels high, regardless of the interests of the home buyer. It matters not to them if the individual will likely default as long as the home can be repossessed and resold to the next buyer in a timely manner.

HUD preemption of state laws failing to meet SAFE Act standards.

The manufactured housing retailers and salespersons included in the definition of loan originator will likely work very hard on the state level to carve out exceptions for themselves so that they can continue practices that have taken advantage of low-income home buyers for decades. HUD needs to clarify that this industry is not above the SAFE Act. The industry touts its importance as affordable housing and its role in the housing sector until laws like this come along and suddenly they act as if they are just selling cars. It cannot be tolerated. This industry and our homeowners were suffering long before the recent housing and mortgage crisis, now that it is here for everyone and changes are being made, its time our homeowners benefitted as well.

Delayed Effective Date. Section 3400.107 of HUD's proposed rules authorize HUD to approve a later effective date upon a state's demonstration that substantial numbers of loan originators (or of a class of loan originators) face unusual hardship. We discourage HUD from allowing a delayed effective date for the manufactured housing industry. Congress granted a long effective date for implementing the Credit CARD Act and industry used it to further abuse consumers. Additionally, the SAFE Act would not impose an unusual hardship on the manufactured housing industry because sales are at an all time low, FHA Title I is retooling, and Fannie Mae and Freddie Mac are awaiting word on Duty to Serve before they move forward. The industry has ample time to implement the SAFE Act requirements and they will be revising there procedures anyway to comply with FHA, Fannie, and Freddie's new requirements. Now is the time to start anew.

Application of the SAFE Act to the Manufactured Housing Industry. As the states enacted their SAFE Acts, many also amended their mortgage lending laws to incorporate the SAFE Act definition of mortgage loan. This has finally given the financing of manufactured homes, which has formerly considered personal property transactions in state mortgage lending laws, the dignity it needs, and subjecting them to mortgage licensing requirements. Personal property finance lenders are now finding themselves subject not only to state sales finance and installment loans and licensing regimes, but they are now also subject to mortgage licensing. This needs to be resolved by the state, as it applies to the manufactured housing industry. It is not a reason to exempt this important housing sector from the SAFE Act.

Implementation of the SAFE Act through NMLSR.

HUD is required to oversee the successful implementation of the NMLSR system. This requires state licensing of individuals acting as loan originators, including obtaining a unique identifier. Although not a prerequisite of the SAFE Act, the NMLSR creates sponsorship of an individual loan originator as a condition precedent to license approval. An individual loan originator cannot work until he or she is sponsored by an entity in the NMLSR. Typically, the sponsoring entity must be the loan originator's employer.

In the manufactured housing industry, several types of entities may employ loan originators. These entities typically hold sales finance company licenses, installment loan licenses, or retail seller licenses. They should not be allowed to sponsor originators until they are adequately licensed.

Titling of Manufactured Homes as Real Property.


The Uniform Laws Commission is undertaking a review and drafting of a uniform law for the titling of manufactured homes as real property and for the uniform laws for securing financing on manufactured homes. The continuation of manufactured homes as chattel and financing like used cars needs to change. In the long run, it will improve the manufactured housing industry.

Closing comments.

Often times, changes to the industry are resisted and it is argued that it creates a burden, but after they are imposed, it has made the industry stronger because they are good for consumers, and in turn, a broader base of lenders. They may not be the type of lenders that have dominated the market. They may have to change their practices. We believe that realization has hit the entire housing market. We believe that is what the SAFE Act is about and removing the manufactured housing industry from the ranks of those who must conform is not good for it or for consumers.

Please feel free to contact us with your comments.

Very truly yours,



Lois Parris,
President of the Board

The National Consumer Law Center (NCLC) joins MHOAA in these comments on behalf of NCLC's low-income clients.



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