



MHI WHITE PAPER:
DODD-FRANK IMPACT ON MANUFACTURED HOUSING
Ensure Access to Affordable Credit in the Manufactured Housing Market

On July 21, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203; Dodd-Frank). The law is considered the most comprehensive rewrite of rules governing banking and financial services in decades and is expected to impact every aspect of consumer finance activity in the nation.

The manufactured housing industry is concerned with the significant revisions to mortgage finance and anti-predatory lending laws. Dodd-Frank amends the Truth in Lending Act (TILA) and other consumer protection laws by adding requirements on residential mortgage loans, including limitations on mortgage origination activities, high-cost mortgages and appraisals—requirements that will make it more difficult for homeowners to obtain affordable financing.

In addition, the Act provides an unprecedented level of authority to a new Bureau of Consumer Financial Protection (CFPB) to develop and rewrite rules and regulations governing mortgage lending activity, including manufactured home loans secured by personal property.

During the 112th Congress, federal policy makers are expected to develop legislative proposals to amend technical glitches, statutory inconsistencies, as well as policy conflicts within the Dodd-Frank Act. To provide regulatory clarity and consistency as well as reduce burdens placed on low- to moderate-income manufactured homeowners, Congress and the Administration are urged to:

- **Preserve access to affordable finance options that responsibly serve the needs of low- and moderate-income manufactured homeowners** and limit the scope of newly developed “high-cost mortgage” triggers, which will restrict funding available for affordable manufactured home purchases.
- **Curtail potential prejudicial treatment of manufactured housing loan products** by limiting CFPB’s ability to arbitrarily enact standards, absent Congressional input, impacting responsible mortgage products designed to meet the needs of low- to moderate income families.
- **Eliminate duplicative and confusing federal policies with respect to mortgage origination standards** which place significant burdens on lenders’ ability to dutifully serve the finance needs of manufactured homeowners.

The following is an overview of Dodd-Frank provisions that are of priority concern to the manufactured housing industry and recommendations for congressional action.

**ISSUE #1: EXPANDED SCOPE OF HOME OWNERSHIP AND EQUITY PROTECTION ACT
UNFAIRLY PENALIZES MANUFACTURED HOMEOWNERS (SEC. 1431)**

The Dodd-Frank Act significantly expands the range of loan products that can now be considered “high-cost mortgages” to include, purchase money loans, construction loans and open-end loans—if they meet certain criteria— all of which were previously exempt from regulation. A mortgage loan will now be considered “high-cost” under the following circumstances:

- **APR exceeds** the average prime offer by more than 6.5 percent; or, by more than 8.5 percent for *personal property transactions under \$50,000*.
- **Total points and fees** exceed five percent for transactions of \$20,000 or more.
- **For transactions under \$20,000**, the lesser of eight percent (*total points and fees*) or \$1,000.

Dodd-Frank also adds new restrictions on high-cost mortgage, including:

- **HUD-certified pre-loan counseling** required for all high-cost mortgages.
- **Multiple disclosures** required to sell or assign a high-cost mortgage to a third-party, including **additional state-specific disclosures** that are triggered by a federal high-cost mortgage designation
- **Blanket prohibition** on prepayment penalties and strict limitations on late fees and inability to finance points and fees.

Consumer Impact: Roughly nine million manufactured homes exist in the United States; with 35 percent to 50 percent of these homes having values under \$20,000. Many of these smaller-sized loans will now likely be designated as high-cost mortgages. Lenders will be less likely to make such loans due to the restrictive regulatory requirements and liability imposed by such thereby restricting financing for manufactured housing. In addition:

- **A lack of financing options** already limits access to credit and constrains liquidity for millions of manufactured homeowners. New high-cost mortgage requirements will further diminish the ability of low- and moderate-income families to secure affordable financing.
- **The revised triggers will increase housing costs** and place a financial burden on millions of low- and moderate-income families that rely on manufactured homes as an affordable and safe housing option.
- **Revised high-cost mortgage standards do not adequately reflect realities** within the manufactured housing market with respect to servicing smaller-sized loans; loans that are already subject to significant consumer financial protection requirements.

Congress is urged to address the unique needs of manufactured homeowners and reduce regulatory burdens associated with providing responsible lending products to manufactured homeowners. Changes to Dodd-Frank must be made to ensure access to affordable financing for the purchase, sale or refinance of existing is available to families that rely on manufactured homes as a safe, quality and affordable housing option.

**ISSUE#2: CLARIFICATION OF QUALIFIED MORTGAGE STANDARDS AND
INCREASED CONGRESSIONAL OVERSIGHT NEEDED (SEC. 1412)**

Dodd-Frank creates a new definition for a qualified mortgage. The measure exempts “qualified mortgages” from adhering to certain provisions in the Act (i.e., ability to repay and appraisal requirements). Within the measure, a qualified mortgage is generally considered a fully documented, amortizing loan with a term not exceeding 30 years and containing specific characteristics, including:

- **Regular periodic payments that do not result** in an increase of the principal balance; a balloon payment; or allow the consumer to defer repayment of principal.
- **Total points and fees not exceeding three percent** of “total loan amount” (*the Act is unclear as to what the term “total loan amount” is defined to mean*).
- **For a fixed rate loan**, underwriting is based on the fully amortizing payment schedule and takes into account taxes, insurance and assessments.
- **For an adjustable rate loan**, underwriting is based on the five-year maximum permitted rate and a fully amortized payment schedule.
- **Compliance with Federal Reserve Board** debt-to-income guidelines (*yet to be determined*) or similar measures of ability to repay.

Consumer Impact: The ability of the CFPB to rewrite existing law absent Congressional input coupled with vague and yet to be defined criteria and terminology places both manufactured homeowners, and lenders on an ever shifting and unlevel playing field. A lack of consistent and reliable standards adds uncertainty in an already distressed manufactured housing market. Specific concerns include:

- **The absolute authority of the CFPB to prescribe regulations** that “revise, add to, or subtract from” the criteria defining a qualified mortgage outlined in Dodd-Frank, essentially allowing the CFPB to define terms at-will and absent Congressional input.
- **The lack of clarity** defining specific criteria of a qualified mortgage that currently exist within the Act.
- **Conflicting definitions of a “qualified mortgage” that exist within Dodd-Frank**, specifically Section 941 of the Act contains guidelines for a qualified mortgage that conflict with the term as it is defined in Section 1412.

Congress is urged to:

- **Limit the ability of the CFPB** to redefine at will and absent Congressional input terms defining a qualified mortgage.
- **Develop enhanced language** providing clear and concise clarification of the terms defining a qualified mortgage.
- **Strengthen the exemption** outlined in the legislation for loan providers in rural and underserved areas to include manufactured housing.

**ISSUE #3: INCONSISTENT AND INCOMPATIBLE MORTGAGE ORIGINATOR STANDARDS
DOMINATING FEDERAL HOUSING FINANCE POLICY (SEC. 1401)**

Dodd-Frank establishes a new definition of a “mortgage originator” that conflicts with existing federal definitions and requirements governing the activities of mortgage loan originators. The multiple definitions of “mortgage originator” that now exist at the federal and state levels are confusing to industry, consumers and regulators alike. Federally-mandated laws indicating which individuals are captured in state and federal mortgage licensing requirements include:

- **The Dodd-Frank Act** which adds a definition within the Truth-in-Lending Act for “mortgage originator.”
- **SAFE Act** (P.L. 110-289) defines activities which trigger a “loan originator” designation and requires states to pass SAFE Act-compliant laws (*Note: while the Dodd-Frank definition of mortgage originator does not amend or replace the existing definition for loan originator that currently exists in the SAFE Act, it does specify persons that must be registered under the SAFE Act*).
- **Model state legislation** developed by the Conference of State Bank Supervisors (CSBS) and with the endorsement of the Department of Housing and Urban Development (HUD) to assist states in enacting SAFE Act-compliant laws also provides a definition of “mortgage loan originator” that differs from the SAFE Act definition.
- **Potentially dozens of individualized state laws** and regulations define the activities of mortgage originator.

Consumer Impact: Federal law has never adequately recognized key differences in lending practices between mortgages secured by personal property versus real property. Mortgage origination requirements have attempted to impose a one-size-fits-all model of regulation that is ill-suited to the manufactured housing industry and the customers it serves.

The manufactured housing industry supports federal efforts to enhance consumer protection and reduce fraud within the mortgage origination arena. However, the lack of clear and consistent statutes and processes for regulating mortgage originators limits consumers’ ability to secure financing to purchase a manufactured home—consumers who are predominantly low-to moderate-income families. Clarity and consistency will provide certainty in the regulatory implementation and enforcement process.

Congress is urged to:

- **Harmonize the myriad of federal definitions** that classify and regulate mortgage originators and mortgage loan origination activities.
- **Clarify and strengthen the existing manufactured housing retail exemption** that currently exists within the Dodd-Frank Act, with respect to mortgage origination activities, to fully enable retailers to provide clear technical assistance to consumers while still maintaining adequate consumer protections.

Issue #4: Higher-Risk Mortgage Appraisal Requirements Ill-Suited for Valuing Manufactured Homes (Sec. 1471)

Dodd-Frank prohibits creditors from making “higher-risk” mortgage loans without first obtaining a written appraisal of the property to be mortgaged, including a physical inspection of the property.

A higher-risk mortgage means a residential mortgage loan secured by a principal dwelling that:

- **Is not a qualified mortgage** as defined in Sec. 1412 (*see Issue #2*).
- **Has an APR that exceeds** the average prime offer rate by: **1.5 percent for first lien mortgages that do not** exceed Freddie Mac conventional limits; **2.5 percent for first lien mortgages that do** exceed Freddie Mac limits; and **3.5 percent for subordinate lien** mortgages.

Consumer Impact: The appraisal requirement relies on a model designed for the site-built housing market that has little applicability to manufactured housing. This new provision will result in a less accurate value analysis for manufactured homes than existing cost-based valuation methods and will add unnecessary time and expense to the loan underwriting process.

The cost of conducting an appraisal is significant in relation to the cost of a manufactured home and could result in increases in interest rates passed on to manufactured homeowners, which could potentially activate the revised high-cost mortgage triggers in Dodd-Frank (*Sec. 1431; see Issue #1*) thereby further limiting credit available to low- to moderate-income families.

Congress is urged to:

- **Direct the CFPB to utilize its exemption authority** outlined in Sec. 1471(b)(3)(B) to exclude manufactured housing from an appraisal requirement that does not adequately protect a manufactured homeowner’s equity.

Issue #5: Narrow Residential Mortgage Loan Definition to Provide Relief to Distressed Manufactured Housing Industry (Sec. 1401)

Dodd-Frank establishes a new “residential mortgage loan” definition covering all consumer loans secured by a dwelling, which subjects a variety of residential mortgage loan activity to regulation and oversight not previously regulated under federal mortgage loan or predatory lending legislation.

Over 60 percent of manufactured home purchases are financed by a personal property loan where the loan is secured by only the home. This differs significantly from the site-built housing market where a mortgage loan is secured by real property, and includes both the home and the land on which it is sited.

Loans secured by personal property, including manufactured home loans, are specifically caught up in a variety of new statutes and pending regulation that were specifically designed to curb abuses in the site-built mortgage market.

Consumer Impact: Since the late 1990s, the manufactured housing industry has declined nearly 80 percent. Coincidentally, the number of lenders serving manufactured homeowners has declined just as dramatically. Dodd-Frank further undermines the availability of financing, as well as significantly increases the cost of credit to the purchasers of manufactured homes.

The manufactured housing industry fully supports federal efforts to enhance consumer finance protection. However, certain lending activities that precipitated the recent housing crash dominated the site-built mortgage housing market, not manufactured home lending secured by personal property.

Congress is urged to recognize the unique lending needs and challenges facing the manufactured housing market and amend the residential mortgage loan definition to cover residential real estate and exclude manufactured homes titled as personal property. This amendment would provide much needed relief to an industry struggling to diligently serve low- and moderate-income homeowners.

***Issue #6: Strengthen and Clarify Exemption Congress Provided
Manufactured Housing Retailers (Sec. 1027)***

Congress recognized the fundamental challenges currently facing the manufactured housing market and provided manufactured housing retailers a targeted exemption from CFPB authority.

The CFPB is the most significant creation of the Dodd-Frank Act. It is a completely independent and autonomous agency, housed within the Federal Reserve that will regulate all consumer financial products and participants, including mortgages, credit cards, banks, payday loans and other financial products.

Nearly every aspect of the manufactured housing industry— including construction, finance and consumer protection— is regulated at the federal level. The industry is already subject to numerous federal consumer protection, housing finance and predatory lending laws. Additional layers of federal regulation and bureaucracy will only serve to further stymie an industry in distress.

Consumer Impact: The exemption drafted by lawmakers is helpful, but limited in scope. Regulations may still be developed that could adversely impact an industry that is struggling to survive and that millions of low- and moderate-income families rely on to provide safe and affordable housing.

Congress is urged to build on and strengthen its initial efforts to safeguard the manufactured housing market by enhancing the scope of the exemption provided to the distressed manufactured housing industry within Dodd-Frank.

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