July 22, 2011

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. R-1417/RIN 7100-AD75 (Proposed Rule for Ability-to-Repay Requirements)

Dear Ms. Johnson:

The Manufactured Housing Institute (MHI), a trade association representing all segments of the factory-built housing industry including manufacturers, lenders, community owners and retailers, appreciates the opportunity to submit formal comments in response to the Federal Reserve Board's (Board) proposed rule and request for public comments (**Docket No. R-1417/RIN 7100-AD75**) issued on May 11, 2011 establishing standards for complying with the ability-to-repay requirement, including by making a "qualified mortgage" as required by Section 1412 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank; P.L. 111-203).

Manufactured housing is a vital component in fulfilling the nation's need for affordable housing. In 2010, according to data compiled by the Census Bureau and American Housing Survey (AHS), 72 percent of all new homes sold under $125,000 and 47 percent of all new homes sold under $150,000 were manufactured homes. As the economy continues to struggle and policy makers seek to bring long-term sustainability to the nation's housing market, these numbers provide important insight into consumers' views of manufactured homes as an affordable and reliable housing choice.

Because of their level of affordability and subsequent heightened sensitivity to relatively minor cost fluctuations and regulatory changes, smaller size loans— which make up the substantial bulk of lending activity within the manufactured housing market— must contend with a higher degree of price pressures than larger loans made in the site built housing market. MHI urges the board to consider the special difficulties facing the manufactured housing industry and the 19 million families living in manufactured homes when developing its final rules.

Specifically, in acknowledging these unique market challenges, the Board is asked to promulgate standards and regulations that provide an incentive to serve the financing and technical assistance needs of low- and moderate-income families seeking to purchase a manufactured home—not further constrain the limited capacity for finance that already exists within this very important market sector.

We thank the Board for is careful consideration of the following comments.

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Comment 1:
Points and Fees Exclusion for Manufactured Home Retailers—§ 226.32(b)(2)(i)

Both the Dodd-Frank Act definition of "mortgage originator" as set out in Section 1401, adding new §103(cc) to the Truth in Lending Act ("TILA"), and revised §226.32 of Regulation Z, as set out in the proposed rule, create an exemption from the definition of points and fees for any compensation paid to "an employee of a retailer of manufactured homes who does 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) but who, for compensation or other monetary gain, assists a customer in obtaining or applying to obtain a residential mortgage loan." As set out in §103(cc)(4), a manufactured home retailer or their employee may, among other things, prepare residential mortgage loan packages and collect information on behalf of the customer with regard to a residential mortgage loan without being considered a "mortgage originator."

As noted in the Board's commentary, the statute intends to exclude from the definition of mortgage originator employees of manufactured home retailers that merely assist consumers in obtaining or applying for a residential mortgage loan (which includes preparing residential mortgage loan packages or collecting information on behalf of a consumer with regard to a residential mortgage loan) and are not taking or offering terms on a residential mortgage loan application and advising on residential mortgage loan terms. The commentary specifically states:

> *Thus, an employee of a retailer of manufactured homes is not considered a 'mortgage originator' even if that person 'for direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain' assists a consumer in obtaining or applying for a residential mortgage loan.*

The intent behind this provision is to allow retailers of manufactured homes and their sales staff the continued ability to assist a customer in locating a lender to finance their home purchase and to assist that customer in submitting loan stipulation documentation to a lender.

The vast majority of manufactured homes are financed as personal property loans and do not fall under traditional "stick-built" home purchase and home financing models. While personal property loans made to finance manufactured housing are secured by a consumer's "dwelling" as defined in TILA, the process of purchasing and financing a manufactured home is vastly different from the site-built model.

Almost all new manufactured homes are sold by licensed manufactured home retailers at sales centers or in manufactured home communities. Because of this unique model and lack of a secondary market for manufactured home loans, the universe of lending institutions is small.

Congress, therefore, recognized and reaffirmed the continued need for manufactured home retailers and their respective sales staff to be able to assist consumers in applying for or obtaining a loan to complete their manufactured home purchase. This practice is critical to the success of the industry its employees, and most importantly to consumers who depend on manufactured housing as a source of affordable housing.

Many banks, national lenders and even local community lenders do not engage in manufactured home financing. As a result, consumers are often unaware of their options when it comes to financing their manufactured home purchase. Without the benefit of an employee of a manufactured home retailer assisting consumers in completing loan applications and providing the consumer with necessary information about financing options, many consumers would be unable to locate financing to complete their home purchase.

In the final rule, to the greatest extent possible, we urge the Board to reinforce that in their activities to assist a consumer in applying for a residential mortgage loan, a manufactured home retailer is not considered a "mortgage originator"—even if this is done for compensation or gain or in the expectation of compensation or gain. Therefore compensation paid to a manufactured home retailer should not be included in any points and fees calculation.

Comment 2:
<u>Qualified Mortgage: Safe Harbor vs. Rebuttable Presumption—§226.43(e)(1)</u>

The Board specifically requests comments regarding §226.43(e) and the dual alternatives for implementing §1412 of the Dodd-Frank Act. This section, entitled the "SAFE HARBOR AND REBUTTABLE PRESUMPTION," creates new TILA §129C(b) in which Congress established the "Qualified Mortgage" as a new type of residential mortgage loan. Statutory use of the words "safe harbor" and "presume" has led the Board to propose two alternatives for implementing the Qualified Mortgage exception:

- **Alternative 1:** "safe harbor" for creditors who make a qualified mortgage
- **Alternative 2**: "presumption of compliance" with the ability-to-repay provisions

MHI believes congressional intent in establishing the Qualified Mortgage was to encourage creditors to gravitate toward that type of loan and to make Qualified Mortgages more readily available to consumers. **For this reason, we urge the Board to adopt Alternative 1 which creates a safe harbor and a true incentive for creditors who follow the requirements of §129C(b).**

Congress entitled Section 1412 of the Dodd-Frank Act "Safe Harbor and Rebuttable Presumption." The inclusion of the term "Safe Harbor" in the heading of this section suggests Congress was contemplating more that just a presumption of compliance when creating the Qualified Mortgage exception. The use of this term would have been unnecessary had Section 129C(b) not been specifically created to provide creditors and assignees of Qualified Mortgages with a safe harbor from the provisions of 129C(a).

As the Board notes in its commentary, when defined as a true safe harbor, the Qualified Mortgage creates certainty and provides significantly more clarity than the presumption of compliance alternative. Creditors can follow the guidelines set out in TILA and Regulation Z for making a Qualified Mortgage, establish polices and procedures to ensure that they follow these guidelines and be assured they have made a loan that they may collect or assign without concern that their credit decision can be legally challenged years later.

The safe harbor alternative makes Qualified Mortgages a much more marketable loan product on the secondary market and therefore more attractive to creditors and investors. Under the safe harbor alternative, potential assignees of Qualified Mortgages can conduct due diligence on a portfolio without the need to re-underwrite and second-guess the credit decision of each loan.

Only under the safe harbor alternative do creditors have a true incentive to conform to the Qualified Mortgage requirements and thereby make these loan types more readily available to consumers. Because it will result in increased access to Qualified Mortgages, consumers will benefit to a much greater degree from adoption of the safe harbor alternative. By law, a Qualified Mortgage cannot contain features such as negative amortization, deferment of principal payments, high points and fees and loan terms over thirty years – features which are widely considered as detrimental to consumers.

Conversely, interpreting the Qualified Mortgage exception as establishing only a presumption of compliance provides little to no benefit to creditors, assignees or consumers. Under this alternative, creditors must follow all the requirements set out in §129C(a) regardless of whether they are making a Qualified Mortgage or a residential mortgage loan with more risky terms or points and fees in excess of the three percent maximum.

While this option may still provide a presumption that the creditor has complied with the ability to repay provisions, it does not prevent a legal challenge being filed years later contesting the underwriting of a loan. When faced with offsetting the increased risk and added cost of defending even an arbitrary and unsuccessful legal challenge, creditors have much less incentive to limit their origination charge to the amounts necessary to make a Qualified Mortgage. Since the intent of Congress was to encourage creditors to offer less risky and less opaque Qualified Mortgages to consumers, it stands to reason Congress also intended to offer additional protections and assurances to creditors.

The Board's comments imply that unless the Qualified Mortgage exception serves as a rebuttable presumption, creditors would not give consideration to a consumer's ability to repay a loan prior to making a Qualified Mortgage. However, when making a Qualified Mortgage, creditors must still verify and document income and assets, as well as consider all mortgage-related obligations before consummating the loan. Additionally, the creditor must underwrite the loan based on a payment schedule that fully amortizes over the life of the loan. It is illogical that a creditor who is required to verify a consumer's income and assets and underwrite the loan based on fully amortizing payments would not also give consideration to a consumer's ability to repay a residential mortgage loan.

For the reasons stated above, MHI respectfully requests the Board to adopt Alternative 1, the safe harbor alternative, as new §226.43(e)(1) of Regulation Z. This interpretation fulfills the intent of Congress in creating a residential mortgage loan product that is attractive to creditors and contains features that are beneficial for consumers.

Comment 3:
<u>Points and Fees on Smaller Loans—§226.43(e)(3)(i)</u>

The Board has requested comments on dual alternatives set out in the proposed rule to implement the mandate under new §129C(b)(2)(D) of TILA that the Board adjust the points and fees threshold for Qualified Mortgages that are "smaller loans." To accomplish this, the Board has proposed to fix the "smaller loan" threshold at $75,000 and adopt one of two alternatives for setting the maximum allowable points and fees for loans under this threshold. Under both options, the Board has proposed limiting points and fees to a maximum of five percent for loans of $20,000 or less while loans of $75,000 and above are capped at three percent.

While MHI appreciates the Board's diligent attempt to adjust the three percent points and fees cap for "smaller loans" and allow lenders to fully recoup costs associated with making these types of loans (as well as providing sufficient incentive to originate), MHI believes that neither option fully captures Congressional intent of providing creditors sufficient incentive to continue making smaller loans.

The Board's proposed increases will not allow creditors to completely recover costs associated with originating a small sized residential mortgage loan. These low balance loans are critical to the economic viability of the manufactured home market and consumers wishing to purchase affordable housing.

According to the U.S. Census Bureau, there are nearly nine million manufactured homes in existence. And, according to 2009 American Housing Survey (AHS) data, the median purchase price of a manufactured home is less than $30,000. This amounts to more than four million manufactured homes with a value/purchase price of under $30,000. The smaller size inherent to manufactured home loans is reflected in the Board's commentary, which indicates in 2009:

- **74.8 percent of all first-lien home-purchase loans** secured by manufactured homes were $75,000 or less; and
- **61.8 percent of all first-lien refinances** secured by manufactured homes were $75,000 or less.

It is vital concern to manufactured home owners—seeking to sell their homes—and for the manufactured housing industry that these homes remain marketable and economically competitive. In order to be marketable and compete as a legitimate alternative to other forms of housing, potential homebuyers must be able to secure financing to complete their home purchase.

Under each of the Board's proposed alternatives, the maximum amount of points and fees a creditor may charge to originate a "smaller loan" would be $1,350 on a $30000 loan (under

Alternative 1); $1,000 on a $20,000 loan; and $500 on a $10,000 loan. Creditor cost to originate a residential mortgage loan is fixed and remains so regardless of loan amount. For many lenders—particularly manufactured home lenders— the proposed cap would not cover their actual cost to originate a loan. If a lender is not able to recover loan origination costs, it is very likely that a consumer would then be unable to secure the loan needed to purchase a home. **Instead, we urge the Board to consider a third alternative that we believe is more consistent with the intent of the smaller loan exception in §129(b)(2)(D) and will also be much clearer and easier for creditors to implement into their current underwriting systems and procedures.**

<u>MHI's proposal would allow creditors to charge the greater of three percent of the total loan amount or $2,000 (indexed for inflation).</u> As indicated in the examples below, this alternative will achieve the desired result of limiting points and fees to a reasonable amount while still allowing creditors to recover the fixed cost necessary to originate a smaller loan:

For a total loan amount of $70,000, a creditor could charge points and fees of:

Board's Alternative 1:	$2,450 (3.5%)
Board's Alternative 2:	$2,240 (3.2%)
MHI Proposal:	**$2,100 (greater of 3% or $2,000)**

For a total loan amount of $50,000:

Board's Alternative 1:	$2,000 (4%)
Board's Alternative 2:	$1,950 (3.9%)
MHI Proposal:	**$2,000 (greater of 3% or $2,000)**

For a total loan amount of $30,000:

Board's Alternative 1:	$1,350 (4.5%)
Board's Alternative 2:	$1,392 (4.6%)
MHI Proposal:	**$2,000 (greater of 3% or $2,000)**

The Board's effort to increase the points and fees percentage represents a good start. However, neither of the Board's alternatives completely accounts for a creditor's fixed origination costs or that these costs are the same regardless if the loan is $300,000 or $30,000. The playing field established by the Board should allow each lender equal opportunity to recover their costs. Under the Board's proposal, a creditor could charge up to a maximum of $9,000 on a $300,000 loan versus $1,392 on a loan of $30,000—a difference of more than $7,600. There is little incentive to originate the smaller loan if the lender is unable to cover origination costs.

When considering smaller size manufactured home purchases, the impact the proposed points and fees caps would have on manufactured home lending and on smaller home loans in general, is significant. The potential detrimental impact is contrary to the intent of Congress in §129C(b)(2)(d) which states "the Board shall prescribe rules. . .to permit lenders that extend smaller loans to meet the requirements of [a Qualified Mortgage]" and further that "in prescribing such rules, the Board shall consider the potential impact of such rules on rural areas and other areas where home values are lower."

Capping the maximum allowable points and fees for a qualified mortgage at five percent ($1,000) for a $20,000 loan will discourage creditors from making smaller loans. Under both options, creditors will be unable to recover their origination costs on most loans under $50,000. The result for consumers is that a residential mortgage loan of less than $50,000 will be difficult if not impossible to secure. Considering the average purchase price of a manufactured home is under $30,000, this means that financing needs of more than four million low- and moderate-income families will go potentially unmet.

MHI appreciates the Board's goal to "ensure that if a loan is a qualified mortgage, it would not also be a high-cost mortgage based on the points and fees, and therefore subject to the more stringent high cost mortgage rules" that are contained in Section 1431 of the Dodd-Frank Act.

In this regard, under specific circumstances, the board does may have some authority to increase these limits, such as:

- **Section 1431 of the Act** does allow the Board to increase the amount of origination costs beyond $1,000 for loans less than $20,000
- **Section 1022 of the Act** may allow the Board limited ability— based on asset class, transaction volume and existing consumer protections—to provide an exemption for certain smaller sized manufactured home loans from the five percent points and fees caps on high cost mortgages for loans above $20,000.

If the Board were to instead limit (for loans of $75,000 and less) the points and fees to the greater of three percent (of the total loan amount) or $2,000, consumers could be guaranteed continued access to smaller loans with limited and defined points and fess. Creditors could then be guaranteed the ability to recover reasonable origination costs.

This would also be a transparent rule that provides a bright-line standard that would be easier for creditors, it would protect consumers from unreasonable fees, and it would encourage lenders to offer low price home loans.

We urge the Board to consider this alternative approach in order to most effectively accomplish Congressional intent of "permitting lenders that extend smaller loans to meet the requirements of [a Qualified Mortgage]."

Comment 4:
<u>Loan Originator Compensation - Employees of Creditor—§226.32(b)(1)(ii)</u>

MHI proposes the Board's final rule clarify that compensation paid to a loan originator that is an employee of a creditor need not be separately accounted for by the creditor and included in the points and fees calculation under section 226.32(b)(1)(ii) if that compensation is already a part of the creditor's costs that are considered in calculating and establishing the creditor's finance charge.

Under the safe harbor provisions established by Dodd-Frank in Section 1412, creditors may potentially fulfill the ability to repay requirements by making a Qualified Mortgage. This section, which amends TILA to add new §129C(b), defines a Qualified Mortgage as a loan wherein, among other restrictions, the consumer is not charged points and fees in excess of three percent of the total loan amount—Section 129C(b)(2)(C) defines points and fees by reference to §103(aa)(4) of TILA, as amended by Dodd-Frank under Section 1431(c)(4). The amended definition of points and fees under §103(aa)(4) includes "all compensation paid directly or indirectly by a consumer or creditor to a mortgage originator from any source, including a mortgage originator that is also the creditor in a table-funded transaction."

Section 1401 of Dodd-Frank defines a "mortgage originator" as a 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; or (iii) offers or negotiates terms of a residential mortgage loan." It seems the goal of Congress in enacting these changes was to ensure compensation to a loan originator for originating a mortgage is included in the creditor's points and fees calculation.

In implementing these revisions to TILA, the proposed rules amend §226.32 of Regulation Z to include in the definition of points and fees "all compensation paid directly or indirectly by a consumer or creditor to a loan originator as defined in §226.36(a)(1)." As the Board notes in a footnote of the proposed rule, §226.36 of Regulation Z defines "loan originator" as a person who "for compensation or other monetary gain, or in expectation of compensation or other monetary gain, arranges, negotiates, or otherwise obtains an extension of credit for another person." Further, the term "includes employees of a creditor as well as employees of a mortgage broker that satisfy this definition." However, a creditor is only considered a loan originator under this section if they are "the creditor in a table-funded transaction." The compensation issue is further clarified in paragraph 32(b)(1)(ii) of the commentary, which indicates "loan originator fees already included in points and fees calculation as finance charges under §226.32(b)(1)(i) need not be counted again under §226.32(b)(1)(ii)." Under §226.32(b)(1)(i) a creditor already must include their finance charges in the points and fees calculation.

The Board's comments under Paragraph 32(b)(1)(ii) can be interpreted as exempting creditors from including compensation to their employees who originate a residential mortgage loan if that compensation is already included in the creditor's finance charge. Creditors typically already factor in all compensation paid to their loan originators when determining their finance charge for a residential mortgage loan. Creditors then establish a finance charge that is analogous for similarly situated consumers and include this charge in the points and fees calculation under Sec. 226.32(b)(1)(i).

Creditors charge an origination fee in large part to cover costs incurred in originating a residential mortgage loan. These costs include compensation paid to the creditor's employees involved in the loan origination process (including administrative and support staff). Therefore, whether compensation paid by a creditor to a loan originator they employ is salary (which the

Board has excluded from the points and fees calculation in the proposed rules), a bonus, commission or otherwise, it is a cost to the creditor in originating the loan and therefore has already been considered by the creditor in establishing their finance charge for making a residential mortgage loan.

MHI understands the goal of the Dodd-Frank Act and the Board's proposed rule is to ensure creditors account for and include in a consumer's points and fees calculation any compensation earned by loan originators in originating the loan. We understand and agree that compensation paid to a mortgage broker or an outside loan originator is a charge above and separate from the creditor's finance charge and must be additionally included in the points and fees calculation. Further, we understand and agree that a creditor's finance charge is included in the points and fees calculation. However, we believe it was not the intent of Congress or the Board to create additional burdens and costs for creditors who already consider loan originator compensation when establishing their finance charge.

It would not be prudent business practice for a creditor to compensate an employee for originating a loan without accounting for that cost when setting their finance charge. Such compensation is effectively already included in the finance charge and in the points and fees calculation. To further require creditors to track and itemize compensation for each specific residential mortgage loan and make potentially subjective determinations regarding whether a particular bonus or other compensation is tied closely enough to a specific loan to trigger inclusion of that amount in the points and fees calculation for an individual loan would create additional costly, redundant and time-consuming documentation while providing no real benefit to a consumer.

If creditors were to include in the points and fees calculation compensation paid to their in-house originators in addition to their finance charge, the consumer would, in some cases, be arbitrarily paying higher origination fees.

For example, assume a creditor pays a bonus to its loan originator employees of $100 after the first ten residential mortgage loans they originate, which is allowable under the Board's rules. As noted, this bonus is a cost to the creditor and is already a factor used by the creditor in establishing its finance charge for residential mortgage loans of this type. Further, assume consumers 9, 10, 11 and 12 apply for a loan with that creditor around the same time period with the same employee. The Board's current proposal would seemingly require that creditor to specifically include that $100 bonus in the points and fees calculation for each of the loans on which the bonus was earned by the loan originator. Therefore, instead of the creditor charging similar loan origination fees for residential mortgage loans to similarly situated consumers based on its average costs for originating these loans, the creditor would have to arbitrarily increase the origination charge for some loans but not others.

Consumers 9 and 10 would receive an arbitrary benefit of paying $100 less in origination charges than consumers 11 and 12 because no bonus or other loan-specific compensation was paid to the employee originating their loans. This leaves consumers 11 and 12 arbitrarily paying more simply because of the timing of their loan applications. We believe this was not the intended result of the TILA amendments or the Board's proposed rules.

We ask the Board to clarify that when a creditor, in establishing their finance charge, considers the average cost incurred to originate residential mortgage loans of a certain type (including the compensation paid to employee for loan origination) and that the finance charge is included under §226.32(b)(1)(i) there is no further requirement for the creditor to specifically include the compensation paid to an individual employee of the creditor for originating a specific loan.

This clarification will reduce unnecessary and redundant regulation for creditors and maintain consistent finance charges for similarly situated consumers no matter when they happen to apply for a residential mortgage loan. Further, this language will fulfill the intent of Congress and the Board in including compensation paid to a loan originator in the points and fees calculation.

We also ask the Board consider adding clarifying language to the proposed rules excluding from §226.32(b)(ii) all compensation paid to a manufactured home retailer and/or their employees that is earned in the normal course of business from the sale of a manufactured home, even if that manufactured home retailer or their employee is also acting as a licensed loan originator with regard to the transaction. Without this clarification, a creditor would presumably have to consider as points and fees all compensation received by the manufactured home retailer that is a licensed loan originator, even if the majority of that compensation is earned by the retailer in the normal course of their business of selling manufactured homes.

By way of an example, assume an employee of a manufactured home retailer has completed the necessary steps and properly obtains a loan originator license under applicable state law. Assume further that the employee, who is also a salesperson, takes the application of one of their prospective customers and forwards it to a creditor for consideration. Upon receiving a loan approval from the creditor, the manufactured home retailer's employee presents the loan terms to their customer. The customer agrees to purchase the home and finance the purchase through the creditor.

For their services as a loan originator and in addition to the sales commission they receive from the manufactured home retailer for selling the home, the employee earns a "broker fee" that is paid by the consumer and financed into the loan. As required by the proposed rule, this fee earned by the employee for performing the activities of a "loan originator" must be included by the creditor in the overall points and fees calculation. However, since the proposed rule states that points and fees includes "all compensation paid directly or indirectly to a loan originator" it appears that under the proposed rule the creditor would also be required to include in the points and fees calculation all compensation earned by the employee, even the sales commission earned from the sale of the home (and not earned as a result of their loan originator activities).

This seems inconsistent with the intent of Congress, which specifically excluded manufactured home retailers and their employees from the definition of loan originator if they do not engage in the activities of a loan originator. Therefore, compensation earned by a manufactured home retailer and their employees should only be included in the points and fees calculation if the compensation was earned in the performance of loan originator activities. The compensation of a manufactured home retailer or their employee earned strictly from the sale of a manufactured home should always be excluded from the points and fees calculation, regardless of whether the manufactured home retailer or their employee is a loan originator or not.

MHI thanks the Board for its consideration of the comments above and the impact of the Board's regulation on the manufactured home industry and on consumers wishing to purchase affordable housing.

Sincerely,

Thayer Long
President and CEO