



Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

**RE: Docket No. R-1417, RIN No. 7100-AD 75
Regulation Z – Truth in Lending Act**

Dear Board of Governors of the Federal Reserve System,

CFED, the Corporation for Enterprise Development, is pleased to submit comments to the Board of Governors of the Federal Reserve System on the proposed rule amending Regulation Z (Truth in Lending). The implementation of statutory changes that expand the scope of the ability-to-repay requirement and the establishment of standards for complying with that requirement put into place several significant protections that will apply to buyers and owners of manufactured housing.

Today, more than 17 million Americans live in manufactured housing. As the largest single source of unsubsidized affordable homeownership in the country, it is the *de facto* source of affordable housing in many of the nation's most persistent poverty regions and high-cost housing markets. In one recent study, more than two-thirds of all new housing constructed over a three-year period that was affordable to low-income families was manufactured. Still, manufactured homes are frequently misunderstood and overlooked due to outdated stereotypes of “trailers” and “mobile homes.” In reality, manufactured housing that is well built, maintained, and sited on land controlled by the homeowner can be attractive, grow in value and open the door to homeownership and wealth building for millions more families.

Since 2005, CFED has led a network and managed a national initiative, Innovations in Manufactured Homes (I'M HOME), which seeks to ensure that all homeowners, regardless of whether their home is site-built or manufactured, enjoy the same rights and privileges of homeownership. I'M HOME also promotes manufactured housing as an affordable and high-quality homeownership option.

CFED's comments on the Board's proposed rule focus on the market for manufactured housing financing, particularly as it affects low-income owners and buyers of manufactured homes. We recognize the challenge of ensuring that the rule establishes practical measures for determining consumers' ability-to-pay without unduly restricting access to credit. CFED's comments offer support for key measures that are particularly relevant to owners of manufactured homes and reasonable recommendations on issues where the Board still needs to choose between alternatives.

Expansion of the Ability-to-Pay Rule

CFED supports the proposed expansion of the ability-to-repay requirement as provided for in this proposed rule. We believe strongly that measures like this one will have constructive, positive implications for promoting the development of safer, more secure financing alternatives for buyers of manufactured homes. We also appreciate the Board's treatment of manufactured home lending as identical to any other loan secured by a dwelling—too often, manufactured home financing is excluded from key federal regulatory measures intended to protect consumers from predatory practices. The breadth of this proposed rule's applicability provides the appropriate amount of coverage to provide protections for a subset of American homeowners living in the largest source of unsubsidized affordable homeownership in the country.

Standards for Compliance with the Ability-to-Repay Requirement

Pursuant to the act, the proposed rule sets forth four options for complying with the ability-to-repay requirement; CFED appreciates the opportunity to share our perspective and recommendations on these standards for compliance:

First, CFED agrees with the **General Ability-to-Repay Standard** and the eight proposed underwriting factors that lenders must consider and verify when determining consumers' ability-to-repay. We believe that credit *history* is an appropriate factor to consider and verify when underwriting, and we strongly urge the Board to clarify that this measure of consumers' ability-to-repay should not be limited to a specific credit score. Consumers must have the ability to provide other materials such as utility, telecom and rental payments that prove their credit worthiness. Also, if there is a dispute about any information in their credit report, that information should be considered. While the broad array of ability-to-repay factors generally creates a strong standard, the statute's limitation of adjustable-rate mortgage underwriting to the fully indexed rate substantially underestimates the potential impact of such loans where they are originated during a dip in interest rates. The ability-to-repay analysis for adjustable rate loans should assume that the loan will increase to several points above the fully indexed rate, as is done in some industry underwriting.

Second, the Board set forth two alternative definitions of a "qualified mortgage," which would provide special protection from liability. Of those options, CFED supports Alternative 2, which proposes that the special protection afforded by Dodd-Frank for creditors who make "qualified mortgages" allows for a *rebuttable presumption* rather than a safe harbor. As the Board's initial research shows, we believe that the rebuttable presumption:

- Better ensures that creditors actually consider a consumer's ability to repay the loan.
- Requires creditors to make individualized determinations that the consumer had the ability to repay the loan based on all of the underwriting factors listed in the general ability-to-pay standard.
- Requires the creditor to comply with all of the ability-to-pay standards and preserve the consumer's ability to use these standards in a defense to foreclosure or other legal action.
- Allows the consumer to assert that, despite complying with the criteria for a qualified mortgage and the ability-to-repay standard, the creditor did not make a reasonable and good faith determination of the consumer's ability to repay the loan.

Third, we believe there are significant problems with the third standard for compliance with the ability-to-repay rule allowing small creditors operating predominantly in rural or underserved areas to originate balloon-payment “qualified mortgages.” The original statutory language regarding this rule provides that the Board “may” include balloon-payment loans within the term “qualified mortgage.” However, inclusion of this alternative is not mandatory.

Because the Board is not *required* to make the exception to the definition of a qualified mortgage for a balloon-payment loan made by a creditor that meets the criteria in the act, we believe that this exception should be made rarely. We recommend that the Federal Reserve, the CFPB and other regulators take steps to encourage lenders in rural and underserved markets to move away from balloon-payment loans in favor of safer loans. Based simply on the quality and safety of balloon-payment loans, CFED would recommend that they not be eligible to satisfy the new ability-to-repay requirements under any circumstances; however, we believe that in the current lending environment this may unduly restrict access to credit in difficult to serve markets. In the short term we advise caution as well as strong education and counseling for consumers and only permitting balloon-payment loans when a refinance market exists—a condition not usually present in the manufactured home finance market. We recommend ultimately moving away from these types of loans in all markets.

Research shows that high-quality manufactured homes that are titled and appraised as real property can appreciate much like site-built homes. However, many manufactured homes are appraised and titled as personal property. The refinance market for these homes is small and undeveloped because lenders are wary of refinancing an asset of declining value, which is often the case when homes are not treated as real property. Balloon-payment loans, by design, require a robust refinance market which is not available to many manufactured homeowners. Thus, our concern is that the manufactured homeowners who cannot refinance their balloon-payment loans will be unable to make the final balloon payment at the end of their loan term (as short as five years), and will have their homes repossessed.

Finally, CFED supports the fourth standard for compliance of the proposed rule that allows creditors to refinance “non-standard mortgages” with risky features into more stable “standard mortgages.” As mentioned earlier, the refinance market for manufactured housing today is nearly nonexistent, particularly for homes titled and appraised as personal property. We support this provision with the hopes that it would promote the development of a better refinance market for manufactured home owners.

43(e)(3) Limits on Points and Fees for “Qualified Mortgages”

Given that the average cost of a manufactured home is \$63,000, the determination of the cap on these points and fees for “small loans” will have a direct impact on manufactured home purchasers. We strongly urge the Board to adopt the method of calculation set forth in Alternative 2, where three tiers are created with a 3 percent cap on loans over \$75,000, a 5% cap on loans under \$20,000 and a calculation used to create a sliding scale of percentage caps for loans between \$20,000 and \$75,000. We believe that this model is fairer for consumers across the board, as compared to the five-tiered system outlined in Alternative 1 that may create simple mathematical anomalies or incentivize market distortions. Such market distortions might include deliberate pricing just below the established tier breaks to maximize fees, or simple random anomalies due to a loan amount falling right above or below the established tier limits. Although we recognize that this formula may be more complex than Alternative 1, we believe that the

importance of consumer protection and the avoidance of market distortions and anomalies afforded by Alternative 2 significantly outweighs any concern over the complexity of the other alternative.

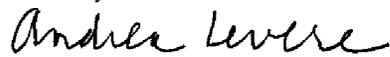
Exclusion of Compensation Paid to Employees of Retailers of Manufactured Homes from Points and Fees Calculation (§ 226.32(b)(2)(i))

Although we recognize that the Dodd-Frank Act's exemption for employees of retailers of manufactured homes from the points and fees compensation limits is not for a matter of debate within the proposed ability-to-repay rule, we would like to reiterate our opposition to this exemption. Borrowers who purchase manufactured homes are particularly vulnerable to abuse due to a market structure that discourages consumer protection and enables lenders and dealers alike to steer borrowers into unsafe loan products by. As with automobile financing, the manufactured home seller tends to control the financing of the sale. Typically, the seller arranges financing with a captive finance company, which increases the opportunity to steer consumers into disadvantageous loans.

While we recognize that this exemption will not be altered through this comment process, we urge the Board and the Bureau to stress the narrow confines of this exclusion. If an employee of a manufactured home retailer takes the loan application, offers or negotiates the credit terms, or advises the consumer on the credit terms, then the compensation paid that employee for those services must be included in the points and fees calculation. In addition, we urge the Board and the Bureau to implement disclosure requirements regarding manufactured home loans with points and fees that exceed the limits established by this proposed rule. Such a disclosure would inform consumers that the loan they are about to receive includes points and fees higher than those they would pay on a "qualified mortgage" that could be obtained from a different creditor.

Thank you for the opportunity to comment on this proposed rule. I'M HOME is dedicated to promoting the use of high quality manufactured housing as one of many mechanisms to cost-effectively increase the supply of affordable housing and promote asset building. We welcome the opportunity to provide the Board of Governors of the Federal Reserve System and the Consumer Financial Protection Bureau with guidance and access to information on our initiative. We appreciate your leadership on this issue and look forward to being a resource to the Board and the CFPB as you move forward on implementation of amendments to the Truth in Lending Act.

Sincerely,



Andrea Levere
President, CFED