



September 7, 2012

**VIA ELECTRONIC DELIVERY
AND HAND DELIVERY**

Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street, N.W.
Washington, D.C. 20552

Re: Docket No. CFPB-2012-0029; RIN3170-AA12;
Proposed Rule - High-Cost Mortgage and Homeownership
Counseling Amendment to the Truth in Lending Act (Regulation Z)
and Homeownership Counseling Amendments to the Real Estate
Settlement Procedures Act (Regulation X) ("Proposed Rule")

Dear Ms. Jackson:

We are writing to the Bureau of Consumer Financial Protection ("CFPB") on behalf of the constituent members of the American Resort Development Association ("ARDA") to voice our concerns regarding the requirements related to homeownership counseling in the proposed amendments to Regulation X. For reasons stated more fully below, the impact of 12 C.F.R. Section 1024.20 of the Proposed Rule would be unduly burdensome on the timeshare industry without any practical benefit for consumers and ARDA believes that Congress intended to exempt timeshare plans from compliance with this requirement.

Summary of Comments

ARDA is submitting comments on one specific issue relative to this proposed rulemaking: the apparent requirement that all lenders issuing federally related mortgage loans covered by RESPA provide the loan applicant, as part of the "home buying information booklet," with a clear and conspicuous written list of five established homeownership counselors or counseling organizations located in the zip code of the loan applicant's current address or, if there are not sufficient counselors in such zip code, located within a zip code or zip codes closest to the loan applicant's current address. The list must be prepared and distributed in accordance with the provisions of proposed new Section 1024.20 of Regulation X, as set forth on pages 212-214 of the Proposed Rule.

Section 1024.20 of the Proposed Rule should exempt financing of timeshare purchases because we believe that there was no Congressional intent to require homeownership counseling for timeshare buyers due to the unique characteristics of the timeshare industry. In contrast to home mortgage lending, timeshare purchases use seller-financing almost exclusively and typically involve fixed rate, low balance short-term loans. The buyer's right of rescission under state law provides additional consumer protection for timeshare purchasers. Finally, the timeshare business model, which relies on purchase and loan documents being executed simultaneously typically at a resort location far from the buyer's state of residence, makes the implementation of Section 1024.20 of the Proposed Rule impractical. As acknowledged in the CFPB's Proposed Rule requiring integrated disclosures, Congress recently exempted timeshare transactions from compliance with certain requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), because of the industry's unique business model, which exemption we believe applies to Section 1024.20 of the Proposed Rule.

About ARDA

By way of background, ARDA is the Washington, D.C. based professional trade association representing the interests of developers of timeshare, fractional and other vacation real estate products. Established in 1969, ARDA's diverse membership includes over 1,000 member companies, ranging from small privately held firms to publicly-traded companies, and including major hotel and entertainment brands. Timeshare is a vital segment of the hospitality and tourism industry. In 2012, there are approximately 1,550 vacation ownership resorts operating in the United States. Of these, 1,023 resorts or 71% are located in ten (10) states. Florida, California and South Carolina have the most resorts, representing 39% of all U.S. timeshare resorts.

Timeshare Purchases Differ Significantly From Home Mortgage Lending

Timeshare interests are purchased and financed differently than traditional real estate products. While the product is often real estate based, the consumer's primary purpose in purchasing a timeshare is to acquire a fully pre-paid, lifetime vacation experience rather than to purchase a dwelling or residence. Unlike home mortgages, timeshare loans are virtually all fixed rate, with small balances and no balloon or prepayment penalties so a consumer can prepay the loan at any time without any cost or penalty. There are no predatory lending issues in the timeshare industry.

The average cost of a timeshare (approximately \$18,401) is small compared to the purchase price of a home and the size of a home mortgage. Approximately 50.7% of timeshare buyers finance the acquisition of their timeshare interest, with almost 100% of those who finance their timeshare interest taking advantage of seller purchase money financing at the point of sale. This occurs because, in addition to the convenience of an on-site financing source, virtually no third party lenders are in the regular business of providing purchase money financing directly to timeshare consumers. In addition, the terms of the developer-provided financing generally are fixed rate loans with a seven (7) to ten (10) year maturity period and include no balloon payments or

prepayment penalties. Buyers are free to obtain alternative financing to pay off the balance owed to the developer/lender at any time without penalty.

Unlike buying a home, there is a state-mandated rescission period for timeshare buyers so that the buyer can cancel his or her purchase and related loan for any reason for a period of time after buying. State laws typically have rescission periods of three (3) days on the low end to fifteen (15) days on the high end during which time a consumer can cancel his or her purchase for any reason whatsoever without penalty. During this period, the buyer can seek counseling or decide that he or she is not happy with the purchase and rescind and cancel the purchase and related loan.

State timeshare registration laws require that a Public Offering Statement and/or Prospectus be delivered to consumers too provide for extensive disclosure, including, but not limited to, information regarding the developer and the resort project and the purchase money financing being provided by the developer for the acquisition of the timeshare interest. These voluminous state mandated disclosures are in addition to the disclosures required by federal law. Other state consumer protection laws also exist to provide additional protections for timeshare purchasers.

Another significant difference between timeshare transactions and home mortgages is that, in a typical timeshare sale, the buyer tours a timeshare resort while on vacation. Usually, the purchase decision is made on the spot, and the sale and loan documents, if the purchase is financed, are provided to and signed by the buyer and the seller at the same time (similar to a car purchase). These documents, including the Truth-in-Lending Act ("TILA") and Real Estate Settlement Procedures Act ("RESPA") required disclosures, are provided to the buyer, reviewed and signed by the buyer and the seller/lender. U.S. buyers almost always reside in different locales than the location of the timeshare resort and do not return to the resort location until some period of time after the documents are executed to enjoy the use of their vacation ownership purchase. The industry also has a large number of international buyers (approximately 15%-20% of buyers). As mentioned previously, timeshare developers provide virtually all of the financing for timeshare buyers who finance their purchase.

The timeshare industry has remained resilient and successful throughout this present economic downturn. According to the *2012 Second Quarter Pulse Survey: A Survey of Timeshare & Vacation Ownership Companies* prepared by Deloitte & Touche LLP for the ARDA International Foundation, there has been a decrease in delinquencies (Q2 2011 compared to Q2 2010) in timeshare consumer loan portfolios and there is no foreclosure problem or credit crunch as exists in the current residential mortgage market. Additionally, and even more importantly, consumers are not at risk of losing their homes if they default on their timeshare loans. A "foreclosure" of a timeshare does not have the economic impact that it does when a lender forecloses on a consumer's principal residence; and timeshare lenders rarely, if ever, seek deficiency judgments. So in practice, there is virtually no recourse to a consumer that defaults on a timeshare loan. The developer simply takes back the timeshare interest in order to resell it.

The Timeshare Carve-Out Under Dodd-Frank Exempts Timeshare Lenders From Having To Comply With Proposed Section 1024.20

Congress recently acknowledged the distinctions between the timeshare industry and home mortgage lending. Section 1401(cc)(5) of Dodd-Frank provides an exemption within the definition of “Residential Mortgage Loan” for extensions of credit relating to a timeshare plan (as defined in Section 101 (53D) of Title 11 of the U.S. Code) for activities described under certain referenced sections of TILA (“Timeshare Carve-Out”). The Timeshare Carve-Out demonstrates a clear legislative intent to distinguish timeshare plans and timeshare loans from more standard residential mortgage loan products. This Congressional intent is important for the CFPB to acknowledge and understand when reviewing our comments in this letter. Section 1443 of Dodd-Frank amends the Housing and Urban Development Act of 1968 (12 U.S.C. 1701) by adding a new subsection (g) called “Procedures and Activities.” Sub-Section (g)(1)(B) of this amendment defines “Homeownership Counseling” as “counseling related to homeownership and residential mortgage loans” (Emphasis added). As part of (B), Dodd-Frank provides a list of the types of homeownership and residential mortgage loans that are covered (subparts (i)-(xiii)), none of which includes timeshare loans. We believe there was no Congressional intent for the homeownership counseling requirement as set forth in Section 1024.20 of the Proposed Rule to apply to timeshare plans because the Timeshare Carve-Out exempts timeshare plans from the Dodd-Frank definition of “Residential Mortgage Loan,” and consequently from the homeownership counseling requirement which by its terms only applies to homeownership and residential mortgage loans.

Implementation of the Proposed Rule Would Not be Practical Given the Unique Characteristics of the Timeshare Industry

Although unintended, the implementation of the proposed Section 1024.20 (List of Homeownership Counselors) to Regulation X does not make sense with respect to the sale and financing of timeshare interests. We will address the timing requirements for delivery to the consumer of the proposed CFPB forms called the "Loan Estimate" and "Closing Disclosure" in our comments to the proposed rule on integrated mortgage disclosures under RESPA and TILA which comments are due by November 6, 2012.

The home counseling section of the Proposed Rule is intended to allow consumers who are buying a first or second home to take advantage of the period of time that exists between signing a purchase contract and shopping for financing and the closing of their purchase and loan to obtain counseling from a local counselor or organization with respect to the terms of the loan they are considering. Such a benefit clearly is valuable to the consumer who is buying a home or other residence. There is a 30, 60 or 90 day period between contact and closing of a home loan. The loan is for a comparatively large amount of money. There are a number of lenders who may be interested in competing to make the loan to the consumer. The consumer may talk with or meet with a local counselor who may provide guidance on a variety of local or national lenders and the terms of their offered products. We agree this is value-added to the home buying process, but should not be applied to the timeshare industry which differs significantly.

Even under the current version of Regulation X, many of the disclosure requirements do not make sense as applied to the sale or financing of timeshare interests because there is no delay between the time the loan application is completed by the borrower and the time the purchase and loan documents are executed. In effect, the delivery currently of the Good Faith Estimate (“GFE”), Special Information Booklet (“Booklet”), and Mortgage Servicing Disclosure Statement take place within a few minutes before delivery of the HUD-1 settlement statement. The costs listed in the GFE are identical to the costs listed on the HUD-1 with no “surprises” to the buyer. The Booklet, geared towards the purchase of a dwelling or residence, has always created confusion for timeshare buyers with its references to home buying and its inapplicability to the purchase of timeshares. We believe requiring timeshare lenders to provide consumers with a list of homebuying counselors or organizations in their zip codes would create even more potential for confusion in the timeshare purchase process and is an unnecessary and inappropriate layer of regulation.

Timesharing, as we have explained above, is totally different than home mortgage lending. The consumer is in all likelihood buying into a single resort or multi-site vacation club not located near his primary residence. Shopping for loans is non-existent because practically all loans are purchase money loans offered by the timeshare developer that is selling the timeshare interest. There is no direct lending market to timeshare buyers. More importantly, there is little or no intervening period of time between since all of the sales and financing documents are signed at the closing table and the loan terms are finalized at that time by the seller. This business model is unique to the timeshare industry and has been a successful business model that has served consumers and resort locations and developers well for more than 30 years. Furthermore, the majority of timeshare lenders continue to serve the account through the life of the loan because of the greater importance placed on the consumer as a timeshare member rather than simply as a loan customer. The industry's unique model has been acknowledged by Congress in the Timeshare Carve-Out, which is based on the critical distinctions between buying a home and buying a timeshare.

ARDA believes that consumers would be confused if they were provided a list of five (5) homeownership counselors near their principal residences. In all likelihood the counselor would have no knowledge of the resort or the developer (or timesharing in general) and could offer little insight into the terms of the loan. Alternatively, counselors could be provided in the location of the resort but that makes little sense since the consumer will only be at the resort while on vacation. Many ARDA developers have multiple resorts as part of their vacation clubs which complicates this issue further. Discussions about possible home inspections, alternative lenders, attractive loan terms or even other timeshare projects in which the consumer could buy an interest would be confusing and not beneficial or even appropriate to have with a consumer who has consummated his or her purchase. We also have concerns about listing five (5) counselors or organizations which may be interpreted by the consumer as promoting a particular counselor's businesses or providing an endorsement of such companies which our members are reluctant to do.

Office of the Executive Secretary
Bureau of Consumer Financial Protection
September 7, 2012
Page 6

Therefore, we believe that, while the CFPB's intentions are good, in the timeshare context providing a listing would be confusing and not helpful to a timeshare buyer.

Conclusion

In conclusion, we request that the CFPB clarify as part of the Proposed Rule that Section 1024.20 does not apply to loans related to timeshare purchases, which is consistent with Congressional recognition of the distinct nature of timeshare plans, as most recently evidenced by the Timeshare Carve-Out in Dodd-Frank.

Sincerely,

A handwritten signature in cursive script that reads "Sandra Yartin DePoy". The signature is written in black ink and is positioned below the word "Sincerely,".

Sandra Yartin DePoy
Vice President, Federal & Regulatory Affairs
American Resort Development Association