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Submitted Online @ Regulations.gov

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

**Re: Docket No. R-1406 and RIN No. 7100-AD 65 - Regulation Z: Escrow Accounts**

Dear Secretary Johnson:

**A. Statement of Interest**

With these comments, the Recreation Vehicle Dealers Association, (RVDA) seeks your assistance in resolving a conflict between an ambiguous regulatory definition interpretation and the real world function of the products the definition may inadvertently regulate. RVDA further seeks to clarify the appropriate jurisdiction, if any, of the new Consumer Financial Protection Bureau has over the class of vehicles known as recreation vehicles (RVs).

RVDA represents an industry with over 3,100 RV dealerships with annual sales over \$19 billion dollars employing almost 43,000 individuals with a payroll in excess of \$1.6 billion dollars (2007 Economic Census). RVDA's membership sells roughly 80% of national travel trailer sales, and 90% of motor home sales. The vast majority of our dealer members are small businesses as defined by the Small Business Administration.

The National RV Dealers Association ("RVDA") submits the following comments in response to the Board of Governors of the Federal Reserve System ("Board") notice and request for comment on the Board's proposal to amend Regulation Z, which implements the Truth in Lending Act ("TILA"), requiring creditors to establish escrow accounts for higher-priced mortgage loans secured by a first lien on a dwelling.

Specifically the Board asked for comments from entities that would be affected by these rules since the credit provisions of TILA and Regulation Z have broad applicability to individuals and

businesses that originate, extend, and service even small numbers of home-secured credit under Section 226.1(c)(1). RVDA believes these regulations may include RV sales in special situations, but these special situations may then require all RV dealers to be licensed as mortgage brokers and begin calculating escrow payments for sales that may happen only once every few years – an impossible burden as you will understand after reviewing these comments.

RVDA believes the Federal Reserve’s Staff Commentary addressing the definition of “Dwelling” to include Recreational Vehicles in certain situations, specifically as it applies to escrow requirements, does not benefit consumers or lenders but, in fact, has eliminated the ability of a small subset of RV lifestyle enthusiasts to obtain RV financing. RVDA requests the Board’s review of this “dwelling” interpretation and its appropriateness to the RV industry.

**B. Recreational Vehicles Transactions are More Like Motor Vehicle Transactions, and Not Like Manufactured Housing Transactions**

Recreational vehicles are somewhat unique products, and have attributes similar to both motor vehicles and homes. However, in practice, RVs are much more related to automobiles than to manufactured housing. RV Dealers are franchised businesses, and follow the financing and product distribution franchise systems used by automobile dealers.

***1. NHTSA, Not HUD, Oversees RV Building Standards***

Recreational vehicles include both motorized units (motorhomes) and towable units pulled behind a tow vehicle (travel trailers and 5<sup>th</sup> wheels, as well as slide-in campers)<sup>1</sup>. According to state and federal definitions, including the U.S. Department of Housing and Urban Development (“HUD”) definitions, RVs are not designed to be used as permanent dwellings, but as temporary accommodations for recreational, camping, travel or seasonal use.

HUD understands the temporary (not permanent) nature of recreational vehicles, and in fact has exempted RVs from its residential building codes. This exemption from HUD building codes certainly indicates that HUD does not see a recreational vehicle as a permanent “Residential Structure.” In contrast, manufactured housing is not exempt from HUD building standards, and would therefore be considered a residential structure. For RVs, the National Highway Transportation Safety Administration (“NHTSA”) has primary authority over regulating safety codes for RVs in its Federal Motor Vehicle Safety Standards.

Because RVs are vehicles, intended and built for use and movement on the nation’s highways, they are subject to the jurisdiction and regulations of the Department of Transportation’s National Highway Transportation Safety Administration (NHTSA). For example, like cars and trucks, RVs are required to have and display a unique vehicle identification number (49 CFR 565). They are subject to a wide variety of Federal Motor Vehicle Safety Standards (FMVSS) addressing such systems, for example, as brakes, tires and rims, exterior lighting and reflective devices and trailer load carrying capacity information labels (49 CFR 571). RV manufacturers must comply with the requirements for reporting and correcting defective vehicles and vehicle equipment through a

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<sup>1</sup>Photos of RVs may be found here: <http://www.gorving.com/explore-rvs/default.aspx>

recall process (49 CFR 573); maintain a database of consumer complaints, accident reports and warranty service information and report this data to NHTSA on a regular basis (49 CFR 576); and are subject to civil penalties for violating the statutes and regulations administered by NHTSA (49 CFR 578). RVs are also specifically identified as a unique vehicle type in the federal government's accident reporting statistics (FARS). None of these regulations apply to manufactured homes.

**2. *RVs are Discretionary Purchases, Not Inexpensive Housing Alternatives***

Unlike manufactured housing attached to real property (which may be an economical permanent housing option for many families), RVs are a discretionary purchase for people looking to enjoy the “on the road” lifestyle for some amount of time. RVs are treated differently from manufactured and other types of factory-built housing by states and the federal government. **Individuals seeking to purchase an RV as an inexpensive housing option would not be financing through an RV dealership, and would instead be purchasing a used unit in a consumer to consumer transaction.**

**3. *RV Loan Transactions are Very Different From Home Loan Transactions***

Whereas all states levy a real property tax on houses, there are only a handful of states that levy personal property taxes on RVs. In states with an RV personal property tax, this tax is typically paid when the customer registers and licenses their vehicle at the time of purchase. Personal property taxes on RVs are treated the same as personal property taxes paid on a consumer's automobile, not like taxes on a house.

RV Insurance is like automobile insurance and is provided by the same insurance carriers. RV Physical Damage and Liability Insurance is always paid for outside the retail installment contract and is required by the lenders to be paid at the time of purchase. **This insurance payment is not part of the RV loan payment, but is separate and distinct from the monthly loan payment.** The RV purchaser is fully aware of the yearly insurance cost associated with their purchase.

**4. *RVs are Distributed Through Franchised Dealers, Licensed by State DMVs***

Similar to automobile dealers, RV dealers conduct their operations on a business model that involves state franchise laws, and state and federal F&I regulations that apply to motor vehicles. RV dealers use many of the same finance forms as automobile dealers and use the same financing sources. RV dealers comply with the same finance practices as automobile dealers in their states. RV dealers are usually licensed by the state's department of motor vehicles (or an equivalent). And in most cases, they are titled as motor vehicles under state department of motor vehicle rules and have state issued license plates.

**C. Niche Lifestyle Where RVs are Used as Fulltime Housing**

There is a unique lifestyle that involves the use of recreational vehicles, usually motor homes, where individuals consider the RV to be their home. The industry calls these individuals “fulltimers.” The RV industry does not track the number of consumers who chose the fulltimer lifestyle, and is unable to establish accurate numbers. Much of the problem is that there is not a

functional definition of a fulltime RVer. This RV lifestyle is popular with retirees, and those whose jobs relocate often such as construction or contract workers or people who just want to simplify their life.<sup>2</sup> Many are called snowbirds and will travel in their RV during the winter months to the South to enjoy the warmer climates in beautiful settings. Fulltimers are not individuals who live in their RV as an economical housing option. RVs are considered a discretionary purchase, full of amenities such as big screen TVs, generators, luxury kitchens, and are targeted to a different demographic. RVs are not considered manufactured housing, and manufactured housing is by definition, a larger housing option, built to different codes, and is priced much less expensively.

For fulltimer demographic information, please visit the [www.Escapees.com](http://www.Escapees.com) website. A 2005 demographic study details ages, salaries, miles used, months traveled, and types of RVs preferred by fulltimers.<sup>3</sup> The results from the Escapees recent January 31, 2011 Demographic Survey has not yet been made publicly available.

However, speaking with RV dealers, lenders formerly involved in RV fulltimer financing, RV insurance companies, and other industry professionals, there seems to be a consensus that **less than one-percent of people who finance a recreational vehicle from a dealer intend to use it as their principal residence.** Many of the individuals buying RVs will not disclose to the selling dealers that they intend for the RV to be their principal dwelling since it often creates difficulties with insurance and financing. Significant percentages of the fulltimers do not finance their RVs, and instead pay cash. We are truly talking about a small part of the RV market.

It is very unlikely there are situations where an individual intends to finance a towable RV from an RV dealer, to place the vehicle in one location and live in it permanently as their “house.” First, it is doubtful such a consumer would be successful in obtaining financing for a luxury depreciating asset; second, many localities have ordinances prohibiting RV owners from keeping the RV in a campground year-round; and third, a person looking to turn a travel trailer in to a permanent housing option would likely purchase a used travel trailer – and nearly seven out of ten used RV purchases are consumer to consumer<sup>4</sup>, and do not involve financing through a dealer.

Maybe in the future, we will have more of an idea of the number of fulltimers. The recent 2010 US Census identifies people in “Transitory Locations” and includes RV parks and campgrounds as one of the transitory locations.<sup>5</sup>

#### **D. The Federal Reserve’s “Dwelling” Definition Interpretation Inadvertently Harms RV Consumers and the RV Industry**

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<sup>2</sup> <http://www.time.com/time/printout/0,8816,1682288,00.html>

<sup>3</sup> <http://www.escapees.com/edocs/demographics.pdf>

<sup>4</sup> A 2005 University of Michigan Study on “RV Demographic Profile” by Richard T. Curtain

<sup>5</sup> [http://www.census.gov/population/www/cen2010/resid\\_rules/resid\\_rules.html#TWENTYTWO](http://www.census.gov/population/www/cen2010/resid_rules/resid_rules.html#TWENTYTWO)

The Federal Reserve Staff Commentary, as detailed below, has created severe problems for financing the fulltimer niche in the RV industry. This was a small market niche that did not attract many lenders. To date, all known lenders to this market niche have stopped lending to known fulltimers as a result of the escrow requirements being applied to RV loans.

[Truth In Lending Act section 103\(v\)](#) (v) The term "dwelling" means a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives.

[PART 226 - TRUTH IN LENDING \(REGULATION Z\)](#)

[226.2 - Definitions and rules of construction.](#)

(a) Definitions. For purposes of this regulation, the following definitions apply: (1) Act means the Truth in Lending Act ([15 U.S.C. 1601](#) et seq.).

(19) Dwelling means a residential structure that contains 1 to 4 units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

[Commentary on Regulation Z \(Truth in Lending Act\) - \(226.2\(a\)\(19\)-2\)](#) **Use as a residence.** Mobile homes, boats, and trailers are dwellings if they are in fact used as residences, just as are condominium and cooperative units. Recreational vehicles, campers, and the like not used as residences are not dwellings.

**The Federal Reserve's Staff Commentary interpreting "dwelling" has caused unforeseen problems in the RV industry:**

*1. The SAFE Act Relies on the Federal Reserve's Dwelling Definition*

The SAFE Act under HUD, which will be overseen by the new Consumer Financial Protection Bureau ("CFPB") later this year, refers to the Truth In Lending Act's definition and interpretation of dwelling. The SAFE Act has taken a general TILA disclosure obligation, and has turned it into a stringent licensing requirement which has eliminated financing to fulltime RVers. Based on the Federal Reserve's Staff Commentary, the SAFE Act arguably encompasses any RV dealer that may (knowingly or unknowingly) finance an RV to a fulltimer. Financing to a fulltimer, a minor market niche in our industry, now requires strict licensing requirements and record keeping by the RV dealer. These costs are well out of proportion to the market niche served. **RVDA has submitted comments to HUD seeking an exemption for RV Dealers from this licensing requirement.** HUD has not answered the comments to date.

*2. Niche Lenders to Fulltimers have Left Due to the October 2010 Escrow Provisions*

The same Federal Reserve Staff Commentary of the definition of dwelling now requires RV dealers to calculate and collect one year's worth of insurance and property taxes for closed-end credit escrows for higher priced mortgages on a motor vehicle. This is an impractical / impossible requirement that drove lenders willing to finance fulltimers out of this niche lending market. Since RVs are motor vehicles, they are highly mobile, capable of traveling and visiting many different counties and states. The fulltimer may not even know where they intend to reside in the RV, and

for what amount of time. This makes the RV Dealer and the bank's task of correctly escrowing the appropriate required funds simply impossible.

a. Commencing October 1, 2010, a new regulation of the SAFE Act in Reg. Z (Truth in Lending Act) Section 226.35(b)(3) entitled, "Escrows" states:

a creditor may not extend a loan secured by a first lien on a "principal dwelling" unless an escrow account is established before consummation for payment of property taxes and premiums for mortgage-related insurance required by the creditor.

Official Staff Interpretation to 226.35(b)(3) of Regulation Z-Truth In Lending Act entitled "Escrows," states:

Section 226.35(b)(3) *applies to principle dwellings*, including structures that are classified as personal property under state law. For example, an escrow account must be established on a higher-priced mortgage loan secured by a first-lien on a mobile home, boat or a trailer used as a consumer's principle dwelling. See the commentary under Sec. Sec. 226.2(a)(19), 226.2(a)(24), 226.15 and 226.23.

b. The SAFE Act defines a Residential Mortgage Loan as any loan primarily for personal, family, or household use that is secured by a mortgage...on a "dwelling" as defined by Section 103(v) of the Truth in Lending Act.

Reg. 226.2(a)(19)-2. Definitions: Dwelling means a residential structure that contains 1 to 4 units, whether or not that structure is attached to real property. The term includes a ...mobile home, and trailer, if it is used as a residence.

Commentary to this regulation in Reg. Z clarifies that "mobile homes, boats, and trailers are dwellings if they are in fact used as residences, just as are condominium and cooperative units. Recreational vehicles, campers and the like not used as residences are not dwellings."

#### **E. The Federal Reserve's Staff Commentary Makes Several Implausible Leaps to Cover Recreational Vehicles as Dwellings**

RVDA believes that to be considered a "Residential Structure" under the TILA definition of dwelling, at a minimum, the residential structure should be built to relevant state or federal housing building codes. Without this minimum threshold, any structure where an individual resides could be covered under these rules.

***1. Recreational vehicles, due to their intended temporary use, are exempt from HUD building codes required for residential structures.***

HUD has previously made the determination that recreational vehicles are not regulated by HUD. HUD has provided federal definitions to address the recreational vehicle industry. In Title 24 CFR Part 3282.8(g)

**Recreational Vehicles:** Recreational Vehicles are not subject to this part, Part 3280, or Part 3283. A recreational vehicle is a vehicle which is: (1) built on a single chassis; (2) 400 square feet or less when measured at the largest horizontal projections; (3) self-propelled or permanently towable by a light-duty truck; and (4) **designed primarily as temporary living quarters for recreational, camping, travel or seasonal use, not as a permanent dwelling unit.** (Emphasis added)

This definition clearly indicates that HUD does not consider RVs as permanent living quarters since it exempted RVs from the building codes. With the small size of RVs, it is virtually impossible to build a structure that can meet HUD residential building codes, and still be able to drive down a highway and handle necessary wind shear requirements. RV Consumers are still protected by ANSI A119.2 standards when they purchase an RV from an Recreation Vehicle Industry Association, a.k.a. RVIA member and NHTSA's Federal Motor Vehicle Safety Standards.

There are no state residential building code requirements for recreational vehicles.

RVDA does not believe that recreational vehicle products, generally less than 320 square feet for travel trailers, and 400 square feet for 5<sup>th</sup> Wheels, are appropriate to be considered dwellings. They are not designed for, nor are they intended to be used as dwellings. They are designed to move freely along America's highways and are intentionally built to be moved frequently on highways and roads – unlike manufactured housing, which is intended to be moved once and sited onto real property.

## **2. NHTSA Defines RVs as Temporary Accommodations**

HUD is not the only federal agency to determine that a recreational vehicle should not be regulated as permanent dwellings, but instead as temporary residential accommodations. The National Highway Traffic Safety Administration ("NHTSA") has similarly defined recreational vehicle types as temporary residential accommodations.

- **Recreational vehicle trailer means** a trailer, except a trailer designed primarily to transport cargo, designed to be drawn by a vehicle with motive power by means of a bumper, frame or fifth wheel hitch and **designed to provide temporary residential accommodations**, as evidenced by the presence of at least four of the following facilities: cooking; refrigeration or ice box; self-contained toilet; heating and/or air conditioning; a potable water supply system including a faucet and a sink; and a separate 110-125 volt electrical power supply and/or propane. "Recreation vehicle trailer" includes trailers used for personal purposes, commonly known as "sport utility RVs" or "toy haulers," which usually have spacious rather than incidental living quarters and provide a cargo area for

smaller items for personal use such as motorcycles, mountain bikes, all terrain vehicles (ATVs), snowmobiles, canoes or other types of recreational gear. 49 CFR 571.3

- **Motor home means** a multi-purpose vehicle with motive power that is **designed to provide temporary residential accommodations**, as evidenced by the presence of at least four of the following facilities: cooking; refrigeration or ice box; self-contained toilet; heating and/or air conditioning; a potable water supply system including a faucet and a sink; and a separate 110-125 volt electrical power supply and/or propane. 49 CFR 571.3

### ***3. Recreational Vehicles Are More Than Just Travel Trailers***

Federal Reserve Staff Commentary makes a large jump from the word “trailers” in 226.2 - Definitions and Rules of Construction to now encompass all motorized, 5<sup>th</sup> Wheel, and towable RVs by using the term “recreational vehicles” in its Commentary on Regulation Z (Truth in Lending Act) - (226.2(a)(19)-2) Use as a Residence. The term recreational vehicle includes all recreational vehicle products, and not just travel trailers. Motorhomes are the vehicle of choice for fulltimers when living the fulltimer lifestyle – travel trailers are less popular with fulltimers.

There is a category of recreational trailers, called “Park Trailers / Models” that exists between Recreational Vehicles, and Manufactured Housing, and arguably look more like manufactured housing than an RV.<sup>6</sup> They are larger than RVs, and often include decks and lofts, but are smaller than manufactured housing. Park Trailers are not as transportable as recreational vehicles, but are still considered a recreational type product and can be exempted from HUD building codes. Park Trailers are often set up to reside in a certain location for longer lengths of time, such as six months. Campgrounds often require Park Trailers to be moved every three to six months to avoid the park trailer being considered a “residence” under state laws. The largest growth area for these Park Trailers is campgrounds, which purchase these trailers to rent out to families.<sup>7</sup>

### ***4. TILA’s Use of the Term “Mobile Home” and “Trailer” is Dated, is Not Part of HUD or Industry Technical Use, and was never intended to cover Travel Trailers***

The HUD definition for a manufactured home is now regarded as the correct term to describe the "mobile" or "trailer" home of the past. This change in definition came to the industry in the late-1980s and early-1990s, as the architecture of many manufactured homes changed to include vaulted ceilings and covered porches. The term "mobile home" was retired because it no longer described the types of homes being manufactured. Today's manufactured homes offer much more diverse options in features and design.<sup>8</sup>

According to the Manufactured Housing Institute:

**What exactly is a manufactured home? The answer may surprise you.**

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<sup>6</sup> <http://media.rptia.com/photos.php>

<sup>7</sup> <http://media.rptia.com/showrelease.php?id=100>

<sup>8</sup> [http://www.ehow.com/about\\_5033420\\_hud-definition-manufactured-home.html](http://www.ehow.com/about_5033420_hud-definition-manufactured-home.html)



A manufactured home is a single-family house constructed entirely in a controlled factory environment, built to the federal Manufactured Home Construction and Safety Standards (better known as the HUD Code).

### **Factory-Built Homes**

Many types of structures are built in the factory and designed for long-term residential use. In the case of manufactured and modular homes, units are built in a factory, transported to the site and installed. In panelized and pre-cut homes, essentially flat subassemblies (factory-built panels or factory-cut building materials) are transported to the site and assembled. The different types of factory-built housing can be summarized as follows:

**Manufactured Homes:** These are homes built entirely in the factory under a federal building code administered by the U.S. Department of Housing and Urban Development (HUD). The Federal Manufactured Home Construction and Safety Standards (commonly known as the HUD Code) went into effect June 15, 1976. Manufactured homes may be single- or multi-section and are transported to the site and installed. The federal standards regulate manufactured housing design and construction, strength and durability, transportability, fire resistance, energy efficiency and quality. The HUD Code also sets performance standards for the heating, plumbing, air conditioning, thermal and electrical systems. It is the only federally-regulated national building code. On-site additions, such as garages, decks and porches, often add to the attractiveness of manufactured homes and must be built to local, state or regional building codes.

**Modular Homes:** These factory-built homes are built to the state, local or regional code where the home will be located. Modules are transported to the site and installed.

**Panelized Homes:** These are factory-built homes in which panels - a whole wall with windows, doors, wiring and outside siding - are transported to the site and assembled. The homes must meet state or local building codes where they are sited.

**Pre-Cut Homes:** This is the name for factory-built housing in which building materials are factory-cut to design specifications, transported to the site and assembled. Pre-cut homes include kit, log and dome homes. These homes must meet local, state or regional building codes.

**Mobile Homes:** This is the term used for manufactured homes produced prior to June 15, 1976, when the HUD Code went into effect. By 1970, these homes were built to voluntary industry standards that were eventually enforced by 45 of the 48 contiguous states.”<sup>9</sup>

According to the Manufactured Housing Institute ([www.manufacturedhousing.org](http://www.manufacturedhousing.org)), the TILA definition of dwelling that references mobile homes and the related Rules of Construction carried on through the Federal Reserve Commentary interpreting dwelling and referencing mobile homes, appear to be at least 20 years out of date.

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<sup>9</sup> [http://www.manufacturedhousing.org/lib/showtemp\\_detail.asp?id=446&cat=1](http://www.manufacturedhousing.org/lib/showtemp_detail.asp?id=446&cat=1)

History for the word “Trailer Home” show that the term “mobile home” and “trailer home” were synonyms describing the same type of manufactured home.<sup>10</sup> “In the United States, this form of housing [Mobile Homes] goes back to the early years of cars and motorized highway travel. It was derived from the travel trailer, a small unit with wheels attached permanently, often used for camping. **Larger units intended to be used as dwellings for several months or more in one location came to be known as home trailers.**<sup>11</sup>”

It would be reasonable to assume that if references to mobile homes are out of date and need corrections that inappropriate and dated references to trailers need to be reviewed as well.

**F. Closed-end Credit Higher Priced Mortgage Loan Rules Are Intended to Protect Subprime Buyers, Not Prime Retail Buyers in a non-real estate industry.**

Motor vehicle loans are made at market rates that are competitive in the motor vehicle industry. Prime Motor vehicle loan rates are historically higher than prime real estate loans rates. There are multiple reasons for there to be different rates between the two industries, such as the length of the loans, the depreciating nature of vehicles, versus the appreciating nature of real estate, and the difficulties in locating a motor vehicle after a loan default, versus locating real estate at a particular address. A competitive prime rate loan in the motor vehicle industry could be incorrectly regulated as a higher priced mortgage loan under the Board's 2008 HOEPA Final Rule in Sec. 226.35.

Many claim that the current economic crisis was created, in part, by a speculative bubble of ever increasing prices in the residential real estate market. Too many people assumed that housing prices would never lose value, and therefore the government and mortgage lending institutions created loan products and processes in order to allow the maximum number of people to finance and own residential real estate loans and take advantage of home ownership. Again, this was based on a model that home prices would always increase in value.

In stark contrast, the RV industry has always tailored its financing products and processes with the understanding that recreational vehicles are depreciating assets. This is the same model followed by the automobile industry. An RV customer does not enter negotiations with an RV dealer with an assumption that the customer could resell the RV in a couple of years to make a profit. Rather, banks and creditors in the RV industry have always had to rely upon an individual's income, credit history and down payment to make financing decisions to protect their interests in a depreciating asset. Recreational vehicles have not, and will never be considered a speculative housing industry.

RVDA does not believe that congress intended to cover recreational vehicle loans as higher priced mortgage loans. RV consumers in general are middle class and higher income-earning households, with significant disposable funds who are making a discretionary purchase. They are able to manage their monthly bills, and are not the consumers that need assistance paying their tax and insurance obligations.

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<sup>10</sup> [http://www.ehow.com/how\\_5348839\\_buy-trailer-home.html](http://www.ehow.com/how_5348839_buy-trailer-home.html)

<sup>11</sup> [http://en.wikipedia.org/wiki/Mobile\\_home](http://en.wikipedia.org/wiki/Mobile_home)

**G. RV Tax and Insurance Practices are Different from Real Estate Tax and Insurance**

Recreational vehicles are taxed and insured more like automobiles than real property. RV purchasers do not face the surprises in the same manner as home purchasers. It appears the intent of the regulation was for home purchasers without prime-rated credit, to understand the true costs of their primary residence. Many consumers may have thought their only payment was the principal and interest on the loan – which they could afford from the beginning. These consumers were only later made aware that the true monthly cost of homeownership also included tax and insurance payments. This is because taxes and insurance on real property are typically settled out of escrow initially, but become an annual obligation of the borrower if they do not have an escrow account.

***1. Most States Do Not Charge Personal Property Taxes (unless on a business)***

In practice for the RV purchaser, the required escrow for the fulltimer will end up primarily being insurance since most counties and states do not have an annual personal property tax on RVs. For the majority of RV purchases (excluding personal property states), the primary tax obligation on an RV purchase is sales tax and that is a onetime tax paid up front in the sales transaction. If the intent of the escrow laws is to protect purchasers from tax obligations they may not be aware of, the majority of RV purchasers will never encounter this tax issue.

Where personal property tax is assessed against an RV, it is assessed on a historically depreciating asset - so the amount owed decreases every year. Real property tax assessments have historically increased year to year (the current economic crisis admittedly is different) and consumers may be surprised by the increase in the value of their asset, and the related real property tax increase. RV owners in personal property tax states are pleased with this decreasing obligation.

***2. RV Owners are Very Aware of Their Monthly / Annual Insurance Costs***

When a consumer purchases real property, the insurance is typically prepaid for a year through an established escrow account. Then, at the end of the first year, if the home purchaser does not have a continuing escrow account, the home-buyer receives a bill for the next year of insurance and will have to pay it themselves.

RV insurance, like automobile insurance, is not typically financed on the contract. The buyer typically secures insurance prior to the execution of the contract and they typically pay the insurance company directly on whatever payment schedule is available (monthly, every 6 months, etc.). The motor vehicle purchaser is very much aware of the cost of the insurance and is not surprised by their first bill one year down the road.

**H. RV Dealer F&I Practices are Already Heavily Regulated**

In a similar manner to automobile dealers, RV Dealers are already covered by numerous state and federal laws intended to protect consumers. RV dealers already face the same Finance and Insurance (F&I) department federal rules and regulations as auto dealers face when dealers sell motor vehicles. These include the Equal Credit Opportunity Act, Fair Credit Reporting Act, FACT

Act, FTC Credit Practices Rule, Gramm-Leach Bliley Act, Truth in Lending and Consumer Leasing Acts, Adverse Action Notices, and Risk Based Pricing Notices to name a few. In addition, states develop their own regulatory scheme to protect motor vehicle purchasers during the finance transactions. The Risk Based Pricing Rule now in effect provides RV buyers with a notice before consummation of the RV sales transaction that something in their credit files may be causing them to be charged a higher rate than individuals with prime credit.

### **I. RV Dealers Are Specifically Exempted from Oversight by the CFPB**

It may be important to note that RV dealers, along with automobile dealers, motorcycle and boat dealers are specifically exempted from oversight by the newly created Consumer Financial Protection Bureau (“CFPB”) under the Federal Reserve. The exemption includes all types of recreational vehicles – motorized and towable. Although exempt from oversight by the CFPB, the various motor vehicle dealers will continue to be regulated by the FTC and its enhanced powers to regulate motor vehicle (i.e. RV) loans.

The Federal Reserve’s Official Staff Commentary defining Dwelling may include RVs in limited circumstances. HUD’s SAFE Act authority for maintenance and enforcement is being transferred to the CFPB under the Federal Reserve Board. This sets up a conflict between the Federal Reserve Official Staff Commentary defining “Dwelling” under the Truth in Lending Act and a direct exemption from Congress for RV dealers from oversight by the CFPB. Add to the confusion that the FTC now has enhanced powers to regulate RV and motor vehicle loans. Certainly the Federal Reserve is not contemplating that RV dealer sales transactions will need to comply with both the existing and enhanced FTC motor vehicle sales transactions requirements and the CFPB’s mortgage licensing laws in the event an RV is sold to a fulltimer. Over 95% of RV dealers in the nation qualify as small businesses under the SBA’s revised size standards.

### **J. The Federal Reserve Board Should Strongly Consider President Obama’s Recent Executive Order**

President Obama’s Presidential Memoranda - Regulatory Flexibility, Small Business, and Job Creation dated January 18, 2011, in part states...

*Accordingly, I hereby direct executive departments and agencies and request independent agencies, when initiating rulemaking that will have a significant economic impact on a substantial number of small entities, to give serious consideration to whether and how it is appropriate, consistent with law and regulatory objectives, to reduce regulatory burdens on small businesses, through increased flexibility. As the RFA recognizes, such flexibility may take many forms, including:*

- extended compliance dates that take into account the resources available to small entities;*
- performance standards rather than design standards;*
- simplification of reporting and compliance requirements (as, for example, through streamlined forms and electronic filing options);*

- different requirements for large and small firms; and*
- partial or total exemptions.*

*I further direct that whenever an executive agency chooses, for reasons other than legal limitations, not to provide such flexibility in a proposed or final rule that is likely to have a significant economic impact on a substantial number of small entities, it should explicitly justify its decision not to do so in the explanation that accompanies that proposed or final rule.*

The Board's proposal will have an impact on a substantial number of RV dealers in the off-chance an RV dealers engages in a sales transaction to a small niche in the RV market that may chose to use their RV as a home for some amount of time. Both HUD and NHTSA have definitions indicating that Recreational Vehicles are considered temporary housing. The Federal Reserve Board's Official Staff Commentary takes incredible leaps to regulate Recreational Vehicles as possible Dwellings, and thereby subjecting all RV dealers to the need to become licensed as mortgage brokers and the need to begin to calculate escrow accounts for RV sales transactions that mostly do not pay annual state personal property taxes nor include insurance in the monthly payment.

RVDA believes that the Presidential Executive Order was intended to address regulatory burdens on small businesses – just as RVDA's comments address.

## **K. Conclusion**

For the reason listed above, RVDA believes that the harm to the RV industry, the shutting down of a consumer lifestyle, and compliance difficulty imposed on small businesses far outweigh the need for the Federal Reserve to regulate recreational vehicles sales transactions to fulltimers as dwellings covered under the Truth In Lending Act.

Therefore, RVDA asks the Board of Governors for the Federal Reserve to:

### ***1. Remove Recreational Vehicles from the Federal Reserve's Official Staff Commentary Interpreting Dwelling***

RVDA specifically asks that the Federal Reserve Board of Governors to review its staff commentary interpretation of the Truth In Lending Act's definition of dwelling. As discussed above, RVDA believes that any interpretation of dwelling that involves recreational vehicles is misapplied to the recreational vehicle industry since "trailer" was initially synonymous with "house trailer" and not "travel trailer." This Staff Commentary is causing havoc in our industry since it is relied upon by HUD in its SAFE Act mortgage licensing requirements and may require RV dealers to obtain mortgage licenses and related training that are completely inapplicable to the way RVs are sold in the United States. Likewise, the Staff Commentary has now driven all known RV lenders for this market niche to abandon fulltimer financing.

***2. Specifically Include Recreational Vehicles in the Section 226.45(b)(2)(iii) Exemptions from the Escrow Rules or Identify how RV Sales Transactions are Exempted under the Section 226.45(b)(2) Exemptions.***

RVDA requests that recreational vehicle sales transactions to fulltimers be specifically exempted from the Escrow Rules. TILA Section 129D(c), authorizes the Federal Reserve Board to exempt from the escrow requirement a creditor that (1) operates predominantly in rural or underserved areas; (2) together with all affiliates has total annual mortgage loan originations that do not exceed a limit set by the Board; (3) retains its mortgage loan originations in portfolio; and (4) meets any asset-size threshold an any other criteria the Board may establish. If the Federal Reserve already believes that RVs are exempted under its proposed Exemptions in 45(b)(2) please make a confirming affirmative statement to assure the lenders on the exemption.

***3. Other Considerations***

RVDA would be happy to discuss additional / alternative options to reduce these burdens on the RV industry.

Respectfully Submitted,

***Wm. Brett Richardson***

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