Testimony of Mr. Kevin Clayton
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Committee on Financial Services
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Thank you, Chairwoman Biggert, Ranking Member Gutierrez and members of the subcommittee for the opportunity to testify this morning on the state of the manufactured housing market.

My name is Kevin Clayton. I am appearing here as the Secretary of the executive committee of the Manufactured Housing Institute. I am also the President and CEO of Clayton Homes headquartered in Maryville, Tennessee. I have a lifetime of experience in the manufactured housing industry dating back to the founding of the company by my father, Jim Clayton in 1966. I have served as President and CEO of Clayton Homes since 1999.

The Manufactured Housing Institute (MHI) is the national trade organization representing all segments of the factory-built housing industry. MHI members include home builders, lenders, home retailers, community owners, suppliers and others affiliated with the industry. MHI's membership includes 50 affiliated state organizations.

Since our founding 35 years ago, Clayton Homes has built more than 1.5 million homes and won multiple awards for design and construction. In fact, we are the largest home builder in the country. The Clayton family of companies build, sell, finance, lease and insure manufactured and modular homes as well as re-locatable commercial and educational buildings. We employ approximately 10,000 team members, and have 33 home building facilities that support more than 1,000 retail home centers. Our financial services companies finance home purchases for more than 325,000 customers and insure approximately 160,000 families. We also own and operate 18 subdivisions. Though we are still family-led, in 2003, Warren Buffett and Berkshire Hathaway Inc. acquired Clayton Homes.

My testimony this morning will focus on three key financial, policy and regulatory challenges facing the manufactured housing market:

- Improving the flow of capital and access to credit in the manufactured housing market
- Minimizing unintended consequences in the regulatory arena that could potentially eliminate access to affordable manufactured housing
- Promoting innovation and preserving affordability through the promulgation of timely and flexible construction codes and standards

About Manufactured Housing

Manufactured housing is a key source of quality affordable housing for 19 million Americans. During this critical time for our nation's housing markets, manufactured housing can play an even greater role in providing reliable sustainable housing for current and future homeowners looking to meet a variety of housing and lifestyle needs.

Manufactured housing is a highly regulated industry, with three distinct qualities: manufactured homes are safe, they are energy efficient, and they are affordable.

Manufactured homes are built almost entirely in a controlled environment, transported to the building site, and completed at the home-site in accordance with federal building codes and enforcement regulations administered by the Department of Housing and Urban Development (HUD). These governing rules are commonly referred to as the "HUD Code".

As the only federally-regulated national building code, the HUD Code regulates home design and construction, installation requirements for strength and durability, resistance to natural hazards, fire safety, electrical systems, energy efficiency, and all other aspects of the home. Homes are inspected every step of the way and our industry adheres to a robust quality assurance program which offers far greater controls than anyone else in the home building industry.

Affordability

Our greatest attribute is delivering quality and value to consumers. Through cost savings and technological advancements in the factory-building processes, the manufactured housing industry can produce homes for 10 to 35 percent less than the cost of comparable site-built construction.

The affordability of manufactured housing can be attributed directly to the efficiencies emanating from the factory-building process. The controlled environment and assembly-line techniques remove many of the challenges encountered during traditional home construction, such as poor weather, theft, vandalism, damage to building products and materials and unskilled labor. Factory employees are trained and managed more effectively and efficiently than the system of contracted labor employed by the site-built home construction industry.

Manufactured housing's affordability means it has long been the housing choice for many low- and moderate-income families, including retirees on fixed incomes and first-time homebuyers. When compared to all homeowners, the median annual income of manufactured homeowners is nearly 50 percent less—$60,000 vs. $32,000 (Source: 2009 American Housing Survey).

Manufactured housing's importance as a sustainable source of affordable housing is reinforced by data indicating that in 2010 it accounted for:

- 72 percent of all new homes sold under $125,000;
- 47 percent of all new homes sold under $150,000; and
- 27 percent of all new homes sold under $200,000.

Manufactured homes serves many housing needs in a wide range of communities—from rural areas where housing alternatives (rental or purchase) are few and construction labor is scarce and/or costly (nearly two of three manufactured homes are located in rural areas), to higher-cost metropolitan areas as in-fill applications. Without land, the average purchase price of a new manufactured home is $62,800 versus $272,900 for a new site-built home (Source: U.S. Census Bureau), which is affordable by almost any measure.

In addition to the valuable role it plays in providing reliable, efficient and affordable housing for 19 million Americans, the manufactured housing industry is an important economic engine. In 2010, the industry produced 50,000 new homes, which were produced in more than 120 home building facilities, operated by 45 different companies, and sold in 4,000 retail home sales centers across the U.S.—generating 75,000 full-time, good-paying, jobs.

The Economic and Regulatory Challenges

Despite its role as a valuable source of affordable housing; a driver of the U.S. economy; and a model of efficiency and sustainability in the larger housing industry, the manufactured housing industry has had ongoing challenges over the past decade. Since 2005, the pace of new manufactured homes sold in the U.S. has declined by 65 percent (146,881 in 2005 vs. 50,046 in 2010) and there has been a decline of nearly 80 percent since 2000 (when 250,419 new manufactured homes were produced).

While the pace of sales for new single-family site-built housing has also declined by roughly 75 percent since its peak in March 2005, the decline in manufactured home sales actually pre-dates the 2007 housing market crash.

The decline in home sales and activity within the manufactured housing market coincides with a number of challenges:

- the growth of subprime lending in the traditional site-built lending market diminished the affordability advantage of manufactured housing;
- the lack of liquidity and credit in the manufactured housing finance sector has limited financing options for our homebuyers;
- the uncertainty and impact of new financial services and mortgage finance regulations has hindered growth; and,
- slow pace of adoption for new standards within the HUD Code has prevented the manufactured housing industry from remaining on the cutting-edge of design and construction.

Like the site-built housing market, the manufactured housing industry can appreciate the difficulty and uncertainty of operating in a stressed environment. New manufactured home construction has fallen roughly 80 percent over the past decade, which has accounted for more than 160 plant closures, more than 7,500 home center closures, and the loss of over 200,000 jobs. More importantly, thousands of manufactured home customers have been left unable to buy, sell or refinance homes. Without action in the following key areas, the people who live in manufactured homes and whose livelihood is connected to this industry are at significant risk.

Improving the flow of capital and access to credit in the manufactured housing market

Over 60 percent of manufactured homebuyers finance their purchase using a personal property loan where the dwelling alone is financed. The ability for lenders to securitize manufactured home loans in the secondary market, particularly those secured by personal property, has been very limited.

MHI and its members have long demonstrated to rating agencies, investors, Fannie Mae, Freddie Mac, the Federal Housing Administration (FHA), Ginnie Mae and others that manufactured housing lenders operate within a disciplined lending environment.

Despite this performance, the government-sponsored enterprises (GSEs) have had little involvement and displayed little interest in financing and securitizing manufactured home loans. Less than one percent of GSE business comes from manufactured housing and none of that comes from manufactured home personal property loans. This is in spite of data indicating that since 1989 manufactured housing has accounted for 21 percent of all new single family homes sold in America.

This barrier has effectively shut off the development of a viable secondary market for manufactured home loans leading to higher financing costs. The development of a viable secondary market would dramatically improve liquidity in the credit-constrained manufactured housing market and provide potential buyers with more ready access to loans to purchase affordable manufactured housing.

As federal policymakers debate the form, shape and structure of a new housing finance system and secondary market mechanism, MHI agrees with many in Congress and other housing stakeholders that any secondary market housing finance structure should be supported by private capital. In addition, MHI believes that any secondary market –particularly if it is supported by a government backstop –should provide equal and open access to manufactured home loans secured by either real or personal property.

As part of the Housing and Economic Recovery Act of 2008 (HERA; P.L. 110-289), Congress directed Fannie Mae and Freddie Mac to establish a secondary market for manufactured home loans, including those secured by personal property. However, given the conservatorship status of the GSEs, the continued sluggishness of the housing market, the uncertain regulatory environment, and concern over taxpayer exposure this mandate has remained unimplemented by GSE's regulator and conservator —the Federal Housing Finance Agency (FHFA).

In moving forward, we encourage Congress to support the creation of a secondary market that allows for loan products, including all manufactured home loans, to compete on a level playing field absent barriers and prejudicial treatment. Improving the prudent flow of capital to the manufactured housing financing sector will lower lenders' cost of capital. This will draw more lenders to the market, increasing competition, lowering financing prices, and enabling more consumers to choose manufactured housing.

Correct the Regulatory Threats to Affordable Manufactured Housing

The manufactured housing industry has always been fully committed to protecting consumers throughout the home buying process. MHI recognizes the importance of responsible lending and improving the consumer experience. MHI has also consistently urged Congress to consider the unique nature of manufactured housing lending and to avoid measures that would inadvertently curtail lenders' ability to make manufactured housing loans.

Over the past year, MHI has been working on a bipartisan basis to educate Members of Congress and the Administration of some of the unforeseen impacts recently enacted legislation would have on limiting access to credit for the purchase of affordable manufactured housing.

Specifically, provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd Frank Act; P.L. 111-203) and the Secure and Fair Enforcement of Mortgage Licensing Act (SAFE Act; P.L. 110-289) would have the unintended consequence of limiting the availability of and access to credit for the purchase of low-cost affordable manufactured housing.

First, the manufactured housing industry is concerned that the significant revisions to mortgage finance and anti-predatory lending laws outlined in the Dodd-Frank Act will disparately impact manufactured home lending. The Act adds significant new requirements on residential mortgage loans, including limitations on mortgage origination activities and high-cost mortgages, which will make it more difficult for manufactured home buyers to obtain affordable financing.

Many of the new regulations that would be imposed on mortgage lenders by the Dodd-Frank Act are designed to curtail questionable lending practices such as zero down payment loans, balloon notes, and stated income loans, which helped bring about the recent decline in the housing market. While the manufactured housing industry and manufactured homeowners played no role in this decline and for the most part maintained prudent underwriting standards, the Act would unfairly lump small balance loans used to purchase affordable manufactured housing into the same category as subprime predatory site-built mortgages.

Section 1431 of the Dodd-Frank Act expands the range of loan products that could now be classified as “high-cost mortgages” under the Home Ownership and Equity Protection Act (HOEPA). A loan would be considered “high-cost” if the Annual Percentage Rate (APR) or “points and fees” exceeds certain thresholds. Unfortunately, the limits established in the Dodd-Frank Act were set without a full understanding of the economics of originating and servicing small balance manufactured home loans.

While drafters of the Dodd-Frank Act recognized that large multi-national banks and small community banks could not be regulated in identical ways; the same realization was not reached for manufactured housing loans. Specifically, statutory thresholds for a $200,000 loan and a $20,000 loan cannot be set and evaluated in the same fashion, which is the effect of Section 1431 as it is now written. The cost of originating and servicing these two different size loans is essentially the same in terms of real dollars. However, the cost, as a percentage of each loan’s size, is significantly different. It is this difference that causes the smaller-sized manufactured home loan to potentially exceed the thresholds in the Act and be categorized as “high-cost” or predatory under HOEPA, even though there is nothing predatory about the features of the loan.

In addition, the lack of a secondary market means lenders are typically forced to hold manufactured home loans in their portfolios, which makes cost of capital associated with originating manufactured home loans higher for these lenders versus those which are able to securitize real property mortgages through the GSEs or through asset-backed securities.

Under this new provision, the propensity for a loan to be classified as “high-cost” greatly increases as the loan size diminishes. According to the American Housing Survey (AHS), the median purchase price of a manufactured home (including new and existing home sales) is $27,000 (versus $107,500 for all occupied units according to 2009 American Housing Survey data). Potentially half of all loans to purchase manufactured homes, or more than four million (out of 8.7 million nationwide), could be at risk of being categorized as “high-cost mortgages.”

An internal analysis of our company’s lending activities yields similar results. Of all loans made year-to-date, more then 50 percent would be classified as “high-cost mortgages” under the HOEPA revisions outlined in the Dodd-Frank Act.

Due to the increased liabilities, responsibilities and stigma associated with making and obtaining a HOEPA "high-cost mortgage," it is likely that a majority of these loans would not be made. Potentially millions of families could see the ability to sell their homes effectively wiped out because lenders would be unwilling to provide the financing needed to sell them.

While a significant percentage of manufactured home loans may have rates higher than traditional site-built mortgages, the terms typically associated with manufactured home loans—namely fixed interest rates, full amortization, and the absence of alternative features (such as balloon payments, negative amortization, etc.)—allow them to satisfy the requirements of what the Dodd-Frank Act would consider conservative and prudent underwriting standards as outlined under the "qualified mortgage" definition in Sec. 1412.

In addition, based on existing regulatory requirements and additional statutory guidelines outlined in the Dodd Frank Act, provide significant consumer protections and disclosures while prohibiting many predatory loan features. These provisions ensure substantial protections are available to consumers without having to subject a majority of manufactured home loans to the onerous HOEPA "high-cost mortgage" designation.

Fortunately, MHI has been working with majority and minority leaders of the House Financial Services Committee to develop a bipartisan solution to this issue that will provide technical correction and relief while maintaining adequate consumer protections.

The manufactured housing industry also has concerns over the lack of clarity provided in implementing the SAFE Act. The SAFE Act was designed to enhance consumer protection and reduce fraud by requiring states to establish minimum standards for licensing mortgage loan originators.

There has been substantial confusion among states in applying the SAFE Act to manufactured home retailers and their salespersons; those financing the sale of their own manufactured homes; and, those engaging in a minimal level of loan origination.

Prior to enactment of the SAFE Act (or issuance of final federal regulations), states began adopting versions of a model/uniform act. HUD issued a final rule in July 2011 that provides some regulatory clarification in recognizing the delineation between the treatment of individuals who undertake the sale of manufactured homes and individuals who engage in the loan origination business, but uncertainty in application of the rule still exists.

Specifically, additional statutory guidance is necessary to ensure that individuals who assist and aid customers in the manufactured home buying process are not categorized as loan originators for purposes of the SAFE Act.

The process of purchasing a manufactured home has some substantial differences from purchasing a site-built home. The ability of a manufactured home retail salesperson to provide key technical assistance in the home buying process absent the risk of being arbitrarily classified as a mortgage loan originator for purposes of the SAFE Act is critical.

Similar to real estate brokers whose activities Congress specifically exempted from SAFE Act licensing requirements, manufactured home retailers are fundamentally in the business of selling homes; they are not in the loan origination business. However, like real estate brokers, manufactured home retailers and sales personnel are fundamentally engaged in providing technical assistance throughout the home buying process. Their core mission is to help a customer through the home buying process. It is not to originate mortgage loans.

In addition, due to the limited financing options available to manufactured home buyers, the ability of retailers and sellers of manufactured homes to provide buyers with adequate information regarding lending options available or to allow manufactured homeowners to finance the sale of their own homes is critical to preserving the availability of manufactured homes as an affordable housing source.

MHI has been working to educate Members of Congress and the Administration, including the new Consumer Financial Protection Bureau (CFPB), which has now assumed jurisdiction over the SAFE Act from HUD, on the need for enhanced clarity and certainty in the SAFE Act implementation process.

MHI is grateful for the diligent support Chairman Bachus and Ranking Member Frank have provided on this issue over the years. Last year, during HUD's rulemaking process, Reps. Bachus and Frank formally requested that HUD provide clearer guidance to states on the treatment of manufactured home retailers and that HUD clarify that states have the ability to provide exemptions to those engaging in minimal levels of loan origination or activity that is occurring outside of a commercial context. The manufactured housing industry and MHI hope to build on this guidance so that both the statute and regulation can provide clearer guidance and relief to manufactured home sellers.

<u>Promote Innovation and Affordability with Timely Construction Codes and Standards</u>

A fundamental reason manufactured housing can serve as a viable source of affordable housing is because of its uniform preemptive building code (The HUD Code) and efficient procedural and enforcement regulatory system, which was established by the Manufactured Housing Construction and Safety Standards (MHCSS) Act of 1974 (42 U.S.C. 5401 et seq.). Federal preemption is essential to the manufactured housing industry's reliance on interstate commerce to produce and distribute housing. A clear advantage for keeping homes affordable is to utilize a single building code and enforcement system.

As with all things, the industry believes the HUD-Code is a "living" code, which needs constant attention and updates in a timely and logical manner.

Subsequent changes to the law with the enactment of the Manufactured Improvement Act of 2000 (P.L. 106-569) made significant enhancement to the MHCSS Act by:

- establishing a balanced consensus process for the development, revision and interpretation of construction standards;
- creating a 'Non-Career' position within HUD to oversee the manufactured housing program
- establishing model manufactured home installation standards; and

- establishing a program to enforce standards in states that choose not to implement their own programs and enhancing the federal preemption of the HUD-Code .

Despite these improvements, HUD has been unable to keep the HUD Code updated in a manner consistent with other building codes. This has made it difficult, if not impossible, for the industry to utilize state-of-the-art building products and technologies. In addition, outdated building codes have left the industry vulnerable to discriminatory zoning and local regulatory restrictions.

Even with Congressional action to significantly strengthen preemption of the HUD Code and its enforcement regulations, HUD has failed to change its outdated 1997 policy guidance on preemption. More importantly, HUD has been unwilling to intervene when state and local regulators attempt to mandate requirements above and beyond the HUD Code or when communities use local zoning to unlawfully prohibit or restrict the placement of manufactured housing.

Next, despite the industry's importance to millions of Americas, HUD has lagged in establishing manufactured housing as a key component of its overall housing mission. For example, HUD's FY 2010-2015 Strategic Plan fails to mention the manufactured housing program as one of the tools for meeting HUD's mission and goals. In the plan, HUD has identified 5 major goals and 18 sub-goals to fulfill its mission, yet the manufactured housing program is mentioned only once—"to protect and educate consumers when they buy, refinance or rent a home."

The manufactured housing program has been without a 'Non-Career' Administrator for several years. Congress intended the Administrator to oversee the development of codes and standards to ensure that the program is managed in accordance with the law, and to act as an advocate for manufactured housing in HUD's overall mission, policies and programs. Appointment of a Non-Career Administrator would serve to enhance the role manufactured housing plays within HUD's overall mission.

Finally, since 2009, HUD has not appointed collective industry representatives to the Manufactured Housing Consensus Committee (MHCC), even though other program stakeholders continue to be represented by appointees from collective organizations. This has severely impaired representation of the industry on the MHCC, depriving it of the benefit of the knowledge, know-how, expertise and institutional memory that the industry's national trade organizations uniquely possess. Appointment of these industry representatives is essential to the maintenance of standards that will properly balance safety, workability and affordability.

Chairman Biggert, Ranking Member Gutierrez and members of the subcommittee I thank you for the opportunity to testify and welcome any questions you may have.

United States House of Representatives
Committee on Financial Services

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Clause 2(g) of rule XI of the Rules of the House of Representatives and the Rules of the Committee on Financial Services require the disclosure of the following information. A copy of this form should be attached to your written testimony.

1. Name:	**2. Organization or organizations you are representing:**
Kevin T. Clayton	Clayton Homes
3. Business Address and telephone number:	
[redacted]	
4. Have you received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?	**5. Have any of the organizations you are representing received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?**
☐ Yes ☑ No	☐ Yes ☑ No
6. If you answered .yes. to either item 4 or 5, please list the source and amount of each grant or contract, and indicate whether the recipient of such grant was you or the organization(s) you are representing. You may list additional grants or contracts on additional sheets.	
7. Signature:	

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