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Office of the Comptroller of the Currency
Docket No. OCC-2012-0013; RIN 1557-AD62

Board of Governors of the Federal Reserve System
Docket No. R-1443; RIN 7100-AD90

National Credit Union Administration
RIN 3133-AE04

Bureau of Consumer Financial Protection
Docket No. CFPB-2012-0031; RIN 3170-AA11

Federal Housing Finance Agency
RIN 2590-AA58

Re: **Appraisals for Higher Risk Mortgage Loans**

Dear Friends:

On behalf of the more than one million members of the National Association of REALTORS®, I write to provide comments on the Proposed Rule to amend Regulation Z, which implements the Truth in Lending Act (TILA) put forth by the Office of the Comptroller of the Currency (OCC) and several other agencies. The Proposed Rule is entitled “Appraisals for Higher-Risk Mortgage Loans.”

The National Association of REALTORS® (NAR) is America’s largest trade association, including NAR’s eight affiliated institutes, Societies and Councils, five of which focus on commercial transactions. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,400 local associations or boards, and 54 state and territory associations of REALTORS®. NAR represents a wide variety of housing industry professionals, including approximately 30,000 licensed and certified appraisers, committed to the development and preservation of the nation’s housing stock and making it available to the widest range of potential homebuyers.

NAR is proud of its record in support of consumer education and protections in the home buying mortgage arena. We also believe that a strong and independent appraisal industry is vital to restoring faith in the mortgage origination process.

Indeed, credible valuation of real property is central to restoring faith in the mortgage process and restoring vibrant housing markets as well.

NAR submits the following comments in response to specific questions raised by the Agencies proposing this rule:



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Question #3: NAR believes that in most instances concerning valuation of higher-risk mortgage loans appraisers who are certified for specific kinds and complexities of properties and situations should be selected rather than any licensed appraiser. While the definitions of “licensed” and “certified” may vary from state to state, the rule should be crafted in a way that assures the maximal level of documented capability that an appraiser must have to handle higher-risk cases.

The definitions of “licensed” and “certified” appraisers, as a result of Dodd-Frank, are now specified in Title XI of FIRREA. The qualification criteria for each are now specified by the Appraiser Qualifications Board of the Appraisal Foundation. According to FIRREA, certified appraisers must be used for complex properties. FHA has made the determination that only certified appraisers may be used for FHA appraisals. NAR believes CFPB should define appraisals for higher-risk mortgage loans as complex, thus requiring that certified appraisers only may perform those appraisals.

Question #4: Appraiser competency is a key concern in any valuation action, but especially in the higher-risk mortgages that are the subject of the proposed rule. NAR strongly supports a central tenet of the Uniform Standards of Professional Appraisal Practice (USPAP) that requires all appraisers, in specific instances, to be competent, acquire competency, or decline the appraisal assignment. We believe the proposed rule should specifically cite this principle as a requirement for accepting assignments covered by the rule. Specifically, we recommend incorporating the following Interagency Appraisal and Evaluation Guidelines:

Selection of Appraisers for Higher-Risk Mortgage Loan Appraisals

A creditor's collateral valuation program should establish criteria to select, evaluate, and monitor the performance of appraisers. The criteria should ensure that:

- 1) The licensed or certified appraiser selected possesses the requisite education, expertise, and experience to competently and credibly complete the appraisal assignment.*
- 2) The work performed by appraisers and persons providing evaluation services is periodically reviewed by the institution.*
- 3) The person selected is independent and has no direct, indirect, or prospective interest, financial or otherwise, in the property or the transaction.*
- 4) The appraiser selected to perform an appraisal holds the appropriate state certification or license at the time of the assignment.*
- 5) The appraiser selected should possess the appropriate experience relevant to the location of the property (geographic competency) and the type of property being valued.*

Question #10: Reverse mortgages, or Home Equity Conversion Mortgages (HECMs), can be valuable tools for older homeowners to tap into their equity. FHA's HECM program protects consumers by limiting fees and ensuring that a homeowner can never owe more than the value of his or her home. In the past, however, unscrupulous lenders have offered predatory reverse mortgages that stripped homes of equity and left homeowners or their heirs with large repayment fees. While the agencies review these rules and the applicability to HECM mortgages, they should strive to ensure that consumers are protected from predatory practices. NAR believes the Agencies should use FHA as the model for an exempt mortgage; those mortgages that do not meet that model should face stricter oversight.

Question #11: NAR agrees that it is appropriate to exempt loans that are secured by a residential structure only, such as a manufactured home. Pricing and financing of such homes is accomplished on a very different basis than most residential housing. We agree further, however, that when the mortgage is to go to purchase a residential structure and the land on which it sits, that the higher-risk mortgage loan rules on appraisals should apply.

Question #15: Just because an appraiser certifies that the appraisal was prepared and completed in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) does not make it so. As stated in the proposed rule, each and every appraiser must certify as to USPAP compliance in every appraisal report. If the purpose of Dodd-Frank and this rule is to ensure appraisals are legitimate, some responsibility must be accepted by the creditor. Once again, the Interagency Appraisal and Evaluation Guidelines provide assistance and can be used as a model. Language from the Guidelines could be used to define “safe harbor” requirements, as follows:

Appraisal Program

A creditor is responsible for adopting and reviewing policies and procedures that establish an effective real estate appraisal program. The program should:

- 1) Provide for the independence of the persons ordering, performing, and reviewing appraisals.*
- 2) Establish selection criteria and procedures to evaluate and monitor the ongoing performance of appraisers.*
- 3) Ensure that appraisals comply with the Uniform Standards of Professional Appraisal Practice and this rule.*
- 4) Ensure that appraisals contain sufficient information to support the credit decision.*
- 5) Provide for the receipt and review of the appraisal in a timely manner to facilitate the credit decision.*

- 6) *Implement internal controls that promote compliance with these program standards, including those related to monitoring third party arrangements.*

Independence of the Appraisal Program

- *For appraisal functions, a creditor should maintain standards of independence as part of an effective collateral valuation program for all of its real estate lending activity. The collateral valuation program is an integral component of the credit underwriting process and, therefore, should be isolated from influence by the creditor's loan production staff. A creditor should establish reporting lines independent of loan production for staff who administers the collateral valuation program, including the ordering, reviewing, and acceptance of appraisals and evaluations. Appraisers must be independent of the loan production and collection processes and have no direct, indirect, or prospective interest, financial or otherwise, in the property or transaction.*
- *Communication between the creditor's collateral valuation staff and an appraiser is essential for the exchange of appropriate information relative to the valuation assignment. A creditor's policies and procedures should specify methods for communication that ensure independence in the collateral valuation function. These policies and procedures should foster timely and appropriate communications regarding the assignment and establish a process for responding to questions from the appraiser.*
- *Consistent with its policies and procedures, an institution also may request the appraiser or person who performs an evaluation to:*
 - 1) *Consider additional information about the subject property or about comparable properties.*
 - 2) *Provide additional supporting information about the basis for a valuation.*
 - 3) *Correct factual errors in an appraisal.*
- *A creditor's policies and procedures should ensure that it avoids inappropriate actions that would compromise the independence of the collateral valuation function, including:*
 - 1) *Communicating a predetermined, expected, or qualifying estimate of value, or a loan amount or target loan-to-value ratio to an appraiser.*
 - 2) *Specifying a minimum value requirement for the property that is needed to approve the loan or as a condition of ordering the valuation.*
 - 3) *Conditioning an appraiser's person's compensation on loan consummation.*
 - 4) *Failing to compensate a person because a property is not valued at a certain amount.*
 - 5) *Implying that current or future retention of an appraiser's services depends on the amount at which the appraiser values a property.*
 - 6) *Excluding a person from consideration for future engagement because a property's reported market value does not meet a specified threshold.*

At the very least, any "safe harbor" provision must require an Engagement Letter, also as described in the Interagency Guidelines, as follows:

Engagement Letters

A creditor should use written engagement letters when ordering appraisals for higher-risk mortgage loans. An engagement letter facilitates communication with the appraiser and documents the expectations of each party to the appraisal assignment. In addition to the other information, the engagement letter will identify the intended use and user(s), as defined in USPAP. An engagement letter also may specify that the assignment is for a higher risk mortgage loan appraisal, and whether there are any legal or contractual restrictions on the sharing of the appraisal with other parties. A creditor should include the engagement letter in its credit file. To avoid the appearance of any conflict of interest, appraisal development work should not commence until the creditor has selected and engaged a person for the assignment.

The engagement letter should specify the criteria that the appraisal must include or address. The specific criteria for post-appraisal creditor certification are referenced in Appendix N of the proposed rule. We agree with most of the required criteria, with exceptions and caveats as noted below. Under the proposed rule, and specifically Appendix N, the creditor must certify that the appraisal:

- Identifies the creditor who ordered the appraisal and the property and the interest being appraised.
- Indicates whether the contract price was analyzed. (NAR believes this should specify that the CONTRACT and CONTRACT price have been analyzed).
- Addresses conditions in the property's neighborhood. (This should include market area – not necessarily the same as neighborhood.)
- Addresses the condition of the property and any improvements to the property. (Should also list repairs necessary, or completed, since the last property transfer.)

- Indicate which valuation approaches have been used, and include reconciliation if more than one valuation approach is used. (The certification should also include a disclosure of which valuation approach WAS NOT used, and the reasoning in support of the exclusion of that valuation approach.)
- Provides an opinion of the property's market value and an effective date for the opinion.
- Indicates that a physical property visit of the interior of the property was performed. (NAR believes this is critically important.)
- Includes a certification signed by the appraiser that the appraisal was prepared in accordance with the requirements of USPAP.
- Includes a certification signed by the appraiser that the appraisal was prepared in accordance with the requirements of FIRREA Title XI, as amended, and any implementing regulations. (This certification does not make sense. Title XI of FIRREA does not impose any requirements on appraisers. It imposes requirements on the federal banking agencies and on states. Such a certification is meaningless, and may impose an illegal requirement on appraisers.)

Question #19: NAR agrees that the requirement for a second appraisal should be waived in rural areas. It is true that creditors in many areas will have difficulty obtaining multiple appropriately licensed and certified appraisers with geographic competency.

Question #31: NAR believes that the anti-flipping provisions of the proposed rule are well intended. However, claims that these criteria and requirements mirror the successful provisions now in force at FHA are overdrawn. HUD does not always require a second appraisal in consecutive sale situations. In fact, alternate documentation such as construction invoices and receipts can be used to substantiate cost differentials.

NAR appreciates the opportunity to comment upon this proposed rule. If you should have any questions regarding this letter, please contact Bill Gilmartin at 202 383-1102 or wgilmartin@realtors.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Moe', followed by a horizontal line.

Maurice "Moe" Veissi
2012 President, National Association of REALTORS®