

# **SpiritBank**

October 9, 2012

Robert E. Feldman, Executive Secretary  
Attention: Comments/Legal ESS  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street NW  
Washington, D.C. 20429

Re: Appraisals for Higher-Risk Mortgage Loans

SpiritBank appreciates the opportunity to comment on the FDIC's proposed amendments to the Truth in Lending Act (Regulation Z), as it relates to Appraisals for loans classified as Higher-Risk Mortgage Loans. As the FDIC has recognized, this matter is very important to both financial institutions and consumers.

Relating to The Agencies' request for comment as to whether the concurrent use of the defined terms "higher-risk mortgage loan" and "higher-priced mortgage loan" in Regulation Z may confuse industry and consumer, we believe it will. When factoring in the similarity of the two terms combined with the important difference of the two definitions (different exclusions as well as different thresholds), this could create confusion in the industry – from training, to vendors, to institution personnel; more certainly, however, it could even more so be confusing for the consumer.

The proposed changes to Regulation Z and which loans are to be classified as "high-risk mortgage loans" are further complicated by the proposed changes relating to the calculation of APR. Relating to The Agencies' request for comment on how to account for the implications of the more inclusive finance charge, we suggest either the use of the current APR calculation or the proposed TCR. Considering however the additional complexity and burden of calculating yet another rate, we suggest as the best option – using the current APR calculation method. We would also ask The Agencies to consider, when determining the calculation method of high-risk mortgage loans, that a wide definition of high-risk mortgage will restrict market access by preventing more mortgages from securitization as it will define certain base loans as high-risk.

If the proposed more inclusive APR (or "all-in-APR") were to take effect, we ask The Agencies to modify the triggers for higher-risk mortgage loans coverage levels to more similarly model the calculations of the current finance charge and APR.

If The Agencies do not exclude bridge and construction loans from the definition of "higher-risk mortgage loan", we suggest additional compliance guidance is needed for applying TILA section 129H's appraisal rules to construction and bridge loans. We strongly request, however, these loans be exempt from the requirement of an additional appraisal (taking into consideration that on construction loans a final appraisal is already required). We also request non-purchase acquisitions be exempt from the

additional appraisal requirement, as well as situations in which a consumer previously held partial interest in the property - as this particular transaction type is less likely to occur as a result of fraudulent property flipping schemes (the main reason stated for the proposed appraisal requirements) and therefore the term "acquisition" should be clarified. Additionally we support the comment that it would be in the public interest and promote safety and soundness of creditors to include an exemption for transaction which have a sales price that exceeds the seller's purchase price by less than a particular amount.

Relating to the required second appraisal, we request of The Agencies the ability to charge for both the original appraisal and the required second appraisal, even if it is to share in the cost of the second appraisal with the consumer, as it is a protection for both the institution and the consumer. We ask of The Agencies to take into consideration that charging community banks and mortgage companies with the cost of a second appraisal is not only unnecessary but will drive more companies from the business of making mortgage loans and therefore further deny services to consumers.

Due to the difficulty of knowing, in some cases, with absolute certainty whether the criteria regarding sales price and dates of acquisition are met, we ask The Agencies allow source documents such as: recorded deed, property tax bills, tax assessment records, and other such documents to be relied upon in determining if a second appraisal is required.

Lastly, we would like to address the instance in which a creditor has reasonable belief that the transaction will not be a higher-risk mortgage loan and later determines the applicant only qualifies for this type of mortgage loan. We request the creditor should be allowed an opportunity to cure and give the required disclosures at some later time in the application process.

Sincerely,

A handwritten signature in black ink that reads "Bkirk". The signature is written in a cursive, slightly slanted style.

Barbie Kirk  
Senior Compliance Officer, AVP  
SpiritBank