WISCONSIN BANKERS ASSOCIATION

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VIA WWW.REGULATIONS.GOV

Ms. Monica Jackson Office of the Executive Secretary Bureau of Consumer Financial Protection 1700 G Street, NW Washington, DC 20552 Docket No. CFPB-2012-0031	Mr. Robert deV. Frierson Secretary, Board of Governors of the Federal Reserve System 20th Street and Constitution Avenue, NW Washington, DC 20551 RIN 7100-AD90
Mr. Robert E. Feldman Executive Secretary Attention: Comments/Legal ESS Federal Deposit Insurance Corporation 550 17th Street, NW Washington, DC 20429	Mr. Alfred M. Pollard General Counsel Attention: Comments/RIN 2590-AA58 Federal Housing Finance Agency Eighth Floor, 400 Seventh Street, SW Washington, DC 20024
Ms. Mary Rupp Secretary of the Board, National Credit Union Administration 1775 Duke Street Alexandria, Virginia 22314-3428 RIN 3133-AE04	Office of the Comptroller of the Currency 250 E Street SW Mail Stop 2-3 Washington, DC 20219 Docket ID OCC-2012-0013

Re: **Appraisals for Higher-Risk Mortgage Loans** (Interagency Proposal); **CFPB**: Docket No. CFPB-2012-0031; **FRB**: RIN 7100-AD90; **FDIC**: Truth in Lending Act (Regulation Z); **FHFA**: RIN 2590-AA58; **NCUA**: RIN 3133-AE04; **OCC**: Docket ID OCC-2012-0013

Dear Ladies and Gentlemen:

The Wisconsin Bankers Association (WBA) is the largest financial trade association in Wisconsin, representing approximately 300 state and nationally chartered banks, savings and loan associations and savings banks located in communities throughout the state. WBA appreciates the opportunity to comment on the above referenced Agencies' proposed rulemaking to implement amendments to the Truth in Lending Act (TILA) regarding appraisal requirements applicable to "higher-risk mortgage loans." These changes are required under Section 1471 of Dodd-Frank Act (DFA), which establishes a new TILA section 129H.

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The Final Rule Should Adopt Coverage Thresholds for Higher-Risk Mortgage Loans That Are Consistent With The Thresholds For Higher Priced Mortgage Loans.

The proposed rule would set special requirements for "higher-risk mortgage loans." A higher-risk mortgage loan would be defined as a closed-end consumer credit transaction secured by the consumer's principal dwelling that meets or exceeds one of three triggers. The proposed triggers provide that a loan is "higher-risk" if: (1) the Annual Percentage Rate (APR) exceeds the applicable Average Prime Offer Rate (APOR) by 1.5 or more percentage points, for a first lien loan with a principal obligation at consummation that does not exceed the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac; (2) the APR exceeds the applicable APOR by 2.5 or more percentage points, for a first lien loan with a principal obligation at consummation that exceeds the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac; or (3) the APR exceeds the applicable APOR by 3.5 or more percentage points for a loan secured by a subordinate lien.

WBA urges the Agencies to adopt higher-risk mortgage loan triggers in a manner that is consistent with existing Higher Priced Mortgage Loan (HPML) rules under TILA. By doing so financial institutions will realize significant cost savings and can avoid negative impact on compliance systems. If these two loan segments can be made compatible, institutions will not be forced to create an entirely new lending segment within existing compliance systems. WBA believes the most effective and efficient way to implement these changes would be to use the same definitions and parameters used in the existing HPML triggers. WBA, therefore, requests that the proposed triggers be identical in terminology and application to those for HPMLs.

The preamble notes that TILA section 129H(f) defines the term "higher-risk mortgage" in a "similar manner" to the existing Regulation Z definition of HPML. The preamble indicates, however, that these definitions also differ in several respects. First, the statutory definition of higher-risk mortgage loan expressly excludes loans that meet the definition of a "qualified mortgage" (QM) under TILA section 129C. In addition, the statutory definition of higher-risk mortgage loan includes an additional 2.5 percentage point threshold for first-lien jumbo mortgage loans, while the definition of higher-priced mortgage loan contains this threshold only for purposes of applying the requirement to establish escrow accounts for HPMLs.

WBA believes the definitional difference regarding QM is significant and should be taken into account in the final rule; however, this difference need not be a catalyst for language variances. WBA believes the exclusion of QM loans could be inserted as a separate provision in a way that leaves the other formulaic language unchanged. The QM exemption would completely relieve qualifying loans from coverage of these appraisal provisions, so a simple statement of this fact through a separate subsection would be sufficient to implement the exclusion.

The preamble also notes that the statutory definition of higher-risk mortgage loan includes an additional 2.5 percentage point threshold for first-lien jumbo mortgage loans, while the definition of HPML contains this threshold only for purposes of applying the requirement to establish escrow accounts for HPMLs. WBA agrees that this is a complicating factor in unifying the formulas for this segment. However, WBA believes that the middle tier of 2.5 percentage points for loans that exceed the Fannie/Freddie limits serves no useful purpose and only serves to add unnecessary compliance difficulties. Member institutions have indicated that this middle tier provides no real advantage to lenders or consumers—institutions will be mainly reliant on the breadth of the QM exemption, and any advantage set forth by this middle trigger will be of limited use. Therefore, WBA would not oppose a final rule that uses a single trigger point of 1.5 percentage points above APOR for all qualifying first lien loans.

The Final Rule Should Not Adopt The Transaction Coverage Rate Alternative As The Calculation By Which A Higher-Risk Mortgage Is Determined.

Under CFPB's 2012 TILA-RESPA Proposal, CFPB is proposing to adopt an "All-In" finance charge calculation for closed-end credit secured by real property or a dwelling. The "All-In" finance charge is not mandated by DFA. Since CFPB may adopt this proposal, it is seeking comment on whether and how to account for the implications of a more inclusive finance charge on the scope of higher-risk mortgage coverage. For example, an alternative approach proposed under this rule would use a "transaction coverage rate" (TCR) in place of the APR as the metric for determining whether a closed-end loan is a higher-risk mortgage loan. Under this approach, the TCR would be calculated in a manner similar to how the APR is currently calculated, except that the prepaid finance charge used for the TCR calculation would include only charges retained by the creditor, a mortgage broker, or an affiliate of either. Thus, the adoption of the TCR is premised upon the adoption of the "All-In" finance charge. WBA absolutely opposes the adoption of the TCR, finding no need for such a metric in light of our vehement opposition to the adoption of the "All-In" finance charge, as more fully described below.

WBA opposes the "All-In" finance charge calculation method because it will create extreme compliance burdens that will far outweigh the dubious value to consumers. WBA also questions the purpose and practicality of CFPB's proposed expansion of the definition of finance charge (FC), which also affects the APR. In the course of DFA-mandated mortgage reform, with short and strict statutory deadlines to implement specifically prescribed regulatory changes, CFPB is voluntarily proposing to re-vamp an established compliance requirement that has been largely untouched in decades, and would do so in a rush, without appropriate consideration of the need for extended debate and little regard for administrative due process.

In enacting the reforms under DFA, Congress was extremely precise in the changes it mandated. DFA in no way mandated a complete overhaul of TILA that CFPB has proposed in other rulemakings. WBA believes that if Congress intended to engage in such a complete overhaul of TILA, it surely would have done so through its enactment of DFA. WBA believes Congress consciously chose not to restructure the existing components of TILA's FC and APR configuration that are set forth in technical detail under the TILA statute. Yet, CFPB's "All-In" FC/APR proposal would completely overhaul these calculations and replace them with entirely different formulas.

In terms of consumer benefit, WBA believes that the overhaul of the FC calculation is pointless because this disclosure is difficult for many mortgage shoppers to understand. Regardless of how this figure is calculated, the FC number is extremely limited in assisting consumers in a better understanding of the terms of credit. In connection with the RESPA/TILA integrated disclosure proposal, CFPB's own research shows that consumers are both confused by the APR and FC and do not use the APR when comparing loans. The consumer confusion stems from the fact that it is a figure which differs from, and actually competes with, the interest rate figure, and from the fact that it is a composite or aggregated figure that consumers cannot fully comprehend absent mathematical dissection.

With respect to compliance burden, CFPB has indicated that the more inclusive definition of the FC for closed-end, dwelling-secured credit transactions, would be “simpler” and, would reduce compliance burden. WBA vehemently disagrees with this assessment. WBA believes significant compliance burdens would be created by this approach, as the existing calculations would remain unchanged for TILA-covered transactions that are not secured by a dwelling. In essence, there would be different calculations for different types of loans. WBA fails to see how this simplifies compliance or assists consumers in understanding terms of credit. If anything, we believe this situation would lead to an even greater level of compliance burden and of consumer confusion.

The proposed expansion of finance charge and APR will cause a multitude of complicating effects throughout the entire compliance process—including in this rule. WBA believes these complications must be explicitly calculated into the regulatory burdens analysis that the Agencies must now conduct in connection with this rulemaking. The so-called “simpler” methodology set forth by this proposal forces the need for very contrived regulatory structures that are complex and expensive—and again, not in any way mandated by law.

In consideration of the monumental changes underway, and with the heavy burdens on the Agencies, industry and consumers to accomplish DFA-required changes in the limited time allotted, initiating the extensive changes to APR for both open and closed end credit is an ill-advised detour from the main path of mortgage market reform. WBA understands the CFPB’s aspirations to create a consumer-friendly way to represent loan costs in a single measure that is superior to the current APR. Whether or not this may be possible is up for debate; however, the prospects for doing so will entail a more extensive policy debate than can be conducted in the few months remaining before the DFA Title XIV deadline. With so much at stake in reforming the housing finance market, pursuing APR revisions within the DFA’s priority time-frame is an ill-advised, wasteful diversion of scarce Agency and industry resources.

Again, for these reasons, WBA opposes the “All-In” finance charge, and, therefore finds no basis for the adoption of the TCR as the calculation by which a higher-risk mortgage loan is determined.

The Final Rule Should Adopt Exemptions For Qualified Mortgages, Reverse Mortgages, Loans Secured Solely By Residential Structures, And Temporary Loans.

The proposal expressly excludes certain classes of consumer credit transactions from the definition of higher-risk mortgage loan. The proposed definition of higher-risk mortgage loan would exclude the following items: (1) loans that are a “qualified mortgage loan”; (2) reverse-mortgage transactions; and (3) loans secured solely by a residential structure. The Agencies also seek comments on excluding construction loans, bridge loans, and other classes of loans.

WBA applauds the Agencies for the explicit exemption of loans that qualify under the definition of qualified mortgage loan, as proposed in the Federal Reserve Board’s Ability to Repay rulemaking. WBA believes this exemption is appropriate as QM loans are, by definition, a segment of loans that carry indicia of safe and sound transactions, and are therefore not defined as “higher-risk” mortgage loans. WBA notes that this exclusion will be of critical importance to financial institutions as they prepare to implement the very difficult provisions of the Ability to Repay rules.

In addition, WBA strongly supports exempting transactions that are secured solely by residential structures. As CFPB recognizes, this exemption is based on the practical and correct consideration that property appraisals and valuations are not at play in instances where real property is not concerned. WBA agrees with the Agencies that TILA section 129H was intended to apply only to loans secured at least in part by real property.

Finally, WBA strongly recommends the Agencies adopt a general exclusion for temporary loans, such as construction and bridge loans. These transactions are inherently temporary or provisional, and they serve the purpose of facilitating a final and permanent long-term financing for the home. Failure to exclude these loans would result in great operational difficulties that would weigh down such transactions with requirements that are of little value to the consumer. It should also be noted that most other mortgage-related regulations, particularly RESPA and TILA, make special accommodations for temporary loans, recognizing their impermanent and transient nature. The protections achieved by placing additional disclosure requirements in these transactions are questionable, at best, because the valuation consumers are interested in is the one performed after the initial construction phase, or after the bridge financing achieves the objective of allowing the consumer to move forward with permanent financing.

The Final Rule Should Include A Safe Harbor Concerning Compliance With TILA.
The preamble notes that the statute is silent as to how creditors should determine whether the written appraisals they have obtained comply with the statutory requirements under TILA section 129H(b)(1) and (b)(3). To address compliance uncertainties, the Agencies are proposing a safe harbor that establishes affirmative steps that creditors may follow to satisfy their statutory obligations under TILA section 129H.

WBA commends the Agencies' proposed safe harbor that is intended to ensure written appraisals are fully compliant. As the Agencies recognize, absent a safe harbor the proposed rule would impose a significant liability risk as well as cost and compliance burdens on creditors making higher-risk mortgage loans. WBA strongly supports the inclusion of the safe harbor.

The Final Rule Should Contain Exemptions From The Requirement For An Additional Appraisal in Certain Higher Risk Mortgage Loans.
Under TILA section 129H(b)(2)(A), an additional appraisal would be required if the purpose of a higher-risk mortgage loan is to finance the purchase or acquisition of the mortgaged property from a person who is reselling the property within 180 days of purchasing or acquiring the property at a price lower than the current sale price. The additional appraisal requirement would not apply to refinances, home-equity loans, or subordinate liens that do not finance the consumer's purchase or acquisition of a principal dwelling. Accordingly, the proposal would require an additional appraisal only when the purpose of a higher-risk mortgage loan is to finance the acquisition of the consumer's "principal dwelling." CFPB asks if there are certain classes of loans which should be exempt from the additional appraisal requirement.

First, WBA encourages the Agencies to consider adopting an exemption to the second appraisal requirement in instances where the initial appraisal was performed by an appraiser that is selected from the lender's list of qualified appraisers. The statutory provision imposing second-appraisal requirements are aimed at guarding against improper property flipping schemes, and WBA supports the intent behind this provision. The preventive measures enacted here would, however, appear unnecessary in instances where the valuation for the higher risk mortgage loan was performed not by a seller-selected appraiser, but by the lender of the buyer. In such instances, that initial appraisal is already guaranteed to have all the necessary indicia of propriety required to guard against a dishonest "flip." Therefore, where the initial appraiser comes from a lender's pre-approved list, there can be no collusion between the seller and the party appraising the property.

Second, due to difficulties in finding qualified appraisers in rural areas, WBA believes that the Agencies should exempt higher-risk mortgage loans made in such rural areas from the additional appraisal requirements. WBA understands that in several of Wisconsin's rural counties, there are no certified appraisers that reside in the area. This means appraisers must travel many miles, with considerable costs and weeks of advance engagement to complete the valuation project. WBA does not believe rural areas are hot-spots for property flipping activities, and, therefore believes such an exemption is appropriate.

The Final Rule Should Address Other Concerns Related To The Requirement For An Additional Appraisal.

WBA supports the decision to not impose additional conditions or restrictions on the identity of the appraisers providing additional written appraisals; however, WBA believes the Agencies should specify that a different licensed or certified appraiser providing the additional written appraisal may be an employee or independent contractor of the same appraisal management company as the appraiser providing the primary appraisal. This level of flexibility is key for areas in which few appraisers are typically available.

WBA also reminds the Agencies of the fact that flipping of property tends to be more widespread in connection with lower-amount loans. As a result, the additional requirements imposed under this proposal would likely have a higher impact on loans that have lower principal balances. Low principal loans are often more prevalent in certain protected communities. It would be unfortunate and an incongruous result if the additional time and costs associated with these proposed requirements negatively impact protected classes that are most in need of financing, while subjecting lenders to disparate impact enforcement. Therefore, WBA requests that "disparate impact" concerns be carefully considered and addressed in the final rule.

The Final Rule Should Adopt Clarifying Language In Disclosures Required For Higher-Risk Mortgage Loans.

The Agencies are proposing to implement the appraisal disclosure required in TILA with a new provision that would contain the following disclosure: *"We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost."*

The proposed rule would generally mirror RESPA and TILA disclosures, requiring that they be provided within three days of application. However, WBA members are concerned that the disclosure promises a "prompt" delivery of an appraisal absent an explicit definition for this term in these proposed regulations. In addition, the language advising the borrower that he or she may pay for an additional appraisal for his or her own use may cause misunderstanding about the lender's responsibility to use that borrower-ordered appraisal. As drafted, the proposed language may imply that if the borrower orders an additional appraisal, then that appraisal could substitute for the lender-ordered appraisal. WBA believes the disclosure must clarify that a lender has no obligation to use or review any borrower-ordered appraisal.

Conclusion

WBA commends the effort the Agencies have put forth in crafting this proposed rule, and appreciates the opportunity to offer its comments. We urge the Agencies to carefully consider the recommendations set forth in this letter, and to focus their time, effort and resources on only those provisions mandated by the Dodd-Frank Act.

Respectfully,

Rose Oswald Poels

Rose Oswald Poels
President and CEO