National Association of Home Builders

1201 15th Street NW
Washington, DC 20005

T 800 368 5242
F 202 266 8400

www.nahb.org

Housing Finance & Regulatory Affairs

David L. Ledford
Senior Vice President

October 15, 2012

Department of the Treasury
Office of the Comptroller of the Currency
250 E Street SW
Mail Stop 2-3
Washington, DC 20219
Docket ID: OCC 2012-00013
Regs.comments@occ.treas.gov

Board of Governors of the Federal Reserve System
20th Street & Constitution Ave, NW
Washington, DC 20551
Attn: Robert deV. Frierson, Secretary
Docket No. R-1443
regs.comments@federalreserve.gov

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attn: Robert E. Feldman, Executive Secretary
FDIC – Truth in Lending Act Regulation Z
comments@FDIC.gov

Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552
Attn: Monica Jackson
Office of the Executive Secretary
Docket No. CFPB – 2012-0031
www.regulations.gov

Federal Housing Finance Agency
Fourth Floor
1700 G Street, NW
Washington, DC 20552
Attn: Alfred M. Pollard, General Counsel
RIN 2590-AA58
RegComments@FHFA.gov

National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428
Attn: Mary Rupp, Secretary of the Board
RIN 3100-AE04
www.regulations.gov

RE: Appraisals for Higher-Risk Mortgage Loans

Submitted via Electronic Delivery to: http://www.regulations.gov

Dear Sir or Madam,

On behalf of the National Association of Home Builders (NAHB), I appreciate the opportunity to submit comments on the above-referenced Proposed Rule that has been proposed by the Board of Governors of the Federal Reserve System (Board); Bureau of Consumer Financial Protection (Bureau); Federal Deposit Insurance Corporation (FDIC); Federal Housing Finance Agency (FHFA); National Credit Union

Administration (NCUA); and Office of the Comptroller of the Currency, Treasury (OCC). The Board, Bureau, FDIC, FHFA, NCUA, and OCC (collectively, the Agencies) propose amending Regulation Z, which implements the Truth in Lending Act (TILA), and the official interpretation to the regulation. The proposed revisions to Regulation Z would implement a new TILA provision requiring appraisals for "higher-risk mortgages" (HRM) that was added to TILA as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

NAHB is a Washington-based trade association representing more than 140,000 members involved in all aspects of single-family and multifamily residential construction. NAHB is committed to addressing the systemic appraisal issues that our industry experienced both before and after the housing crisis. NAHB convened four appraisal summits (two in 2009 and one each in 2010 and 2011) and will have our fifth summit on October 24, 2012. NAHB's Appraisal Summits involved representatives of major housing and financial institution stakeholders, appraisal organizations, and federal housing and banking regulators to discuss appraisal problems and solutions. There has been broad agreement at the summits that the stakeholder organizations should work together to address the critical appraisal issues that remain a major impediment to the housing recovery and, therefore, finding solutions to these problem continues to be a major priority for NAHB.

NAHB and its members have a strong interest in supporting a housing finance system that offers home buyers access to affordable mortgage financing in all geographic areas, in all economic conditions. NAHB supports efforts that provide clarity for consumers, assisting them in making informed choices while ensuring that we do not create unnecessary and potentially prohibitive burdens to industry.

NAHB focuses its comments to the Agencies on:

- Concerns About the Impact of an Additional Mortgage Classification and Changes to Annual Percentage Rate (APR) Calculation. (Questions 6-8)
- Importance of Complete Exemptions for Construction Loans and Bridge Loans from HRM Rules. (Questions 12-13)
- Concerns that Requiring an Additional Appraisal Could Cause Delays. (Question 17)
- Support for Exemptions Considered for HRMs in Rural Areas. (Question 19)

Background

On July 21, 2010 the Dodd-Frank Act established a new TILA section 129H, which sets forth appraisal requirements applicable to HRMs. A HRM is a residential mortgage loan secured by a principal dwelling with an annual percentage rate (APR) that exceeds the average prime offer rate (APOR) for a comparable transaction as of the date the interest rate is set –

- By 1.5 or more percentage points, for a loan with a principal obligation at consummation that does not exceed the limit for loans eligible for purchase by Freddie Mac.
- By 2.5 or more percentage points, for a loan with a principal obligation at consummation that exceeds the limits for loans eligible for purchase by Freddie Mac.
- By 3.5 or more percentage points for a subordinate lien residential loan.

The new TILA section 129H prohibits a creditor from extending credit in the form of a HRM loan to any consumer without first:

- Obtaining a written appraisal performed by a certified or licensed appraiser who conducts a physical property visit of the interior of the property.
- Obtaining an additional appraisal from a different certified or licensed appraiser if the purpose of the HRM loan is to finance the purchase or acquisition of a mortgaged property from a seller within 180 days of the purchase or acquisition of the property by that seller at a price that was lower than the current sale price of the property.
- Providing the applicant, at the time of the initial mortgage application, with a statement that any appraisal prepared for the mortgage is for the sole use of the creditor, and that the applicant may choose to have a separate appraisal conducted at the applicant's expense.
- Providing the applicant with one copy of each appraisal conducted without charge, at least three days prior to the transaction closing date.

The proposal also includes a proposed amendment to the method of calculation of the APR that is being proposed as part of other mortgage-related proposals issued for comment by the Bureau. The Bureau is proposing to adopt an inclusive finance charge calculation for closed-end credit secured by real property or a dwelling in the Bureau's 2012 TILA-RESPA proposal. The Agencies are also considering an alternative metric, the transaction coverage rate (TCR), which would exclude all prepaid finance charges not retained by the creditor, a mortgage broker, or an affiliate of either.

The proposal also requests comment on exemptions to the proposed rule including, construction and bridge loans as well as rural properties.

NAHB Comments

NAHB Has Concerns About the Impact of an Additional Mortgage Classification and Changes to APR Calculations. (Questions 6-8)

NAHB is concerned that this proposal introduces an additional classification of mortgage, the "higher risk mortgage" to an already increasingly complicated lending environment for both home buyers and industry to navigate. NAHB hears from our lending partners that the time and cost required to evaluate each loan opportunity against potentially overlapping definitions do not translate to increased consumer protection, but will instead impose higher costs on potential borrowers. NAHB is concerned that consumers will become inundated with an overly complicated process and choose not to participate.

The proposal also introduces substantial and potentially disruptive changes to revise the APR and move toward a more inclusive finance charge that could increase the number of loans classified as HRMs. The Dodd-Frank Act does not require this change to APR calculations and NAHB questions if the Agencies should undertake this initiative without Congressional direction during a period of such economic uncertainty. Additionally, the Agencies indicated they do not currently have sufficient data to model the impact of these changes and the possible unintended consequences.
The Agencies also presented an alternative approach by introducing the transaction coverage rate (TCR) which is calculated similarly to the APR but includes only charges retained by the creditor, a mortgage broker, or an affiliate of either. NAHB believes consumers are already

confused by APRs and recommends that the Agencies work with industry stakeholders to ensure triggers for HRMs are at appropriate levels for both consumers and industry. NAHB urges the Agencies to simplify and provide clarity for consumers instead of introducing additional uncertainty.

NAHB Supports Complete Exemptions for Construction Loans and Bridge Loans from HRM Rules. (Questions 12-13)

NAHB supports the complete exemption of construction loans and bridge loans from the HRM rules. NAHB agrees with the Agencies that construction loans and bridge loans are important financing vehicles for both consumers and industry. The proposed exemption also acknowledges that bridge loans are useful and even necessary for many consumers though they may have higher interest rates that could trigger HRM thresholds due to their short term nature. Both of these financing vehicles are unique and provide valuable access to credit for consumers.

As recently as the second quarter of 2012, NAHB's Quarterly Survey of Acquisition, Development & Construction (AD&C) Financing (Financing Survey) showed a lending gap between home building demand and available credit. Since the beginning of 2007, the dollar value of single-family construction permits has fallen 54 percent. During the same period, lending to home builders for AD&C purposes is down 79 percent. These statistics highlight the lending gap between opportunities to build new homes and the lack of available construction loans to finance them. This gap can be narrowed by home buyers using consumer construction loans to finance new construction.

Consumer construction loans take two different forms:

- Balloon Loan: The home buyer applies for and pays closing costs for a construction loan and pays only the interest during construction. Then, the borrower applies for and pays closing costs on a residential mortgage that pays off the construction loan. The two loans can be from the same or different lenders.

- Construction-to-Permanent or Single-Close Construction Loan: This loan allows a home buyer to obtain financing for both the construction loan and the end mortgage loan with one set of closing costs, instead of two. The single-close loan converts into a permanent residential mortgage through a modification process at the conclusion of construction and after the home is 100 percent complete, inspected and the occupancy permit is obtained. Construction-to-permanent loans usually cost less upfront. Lenders make these loans because they are longer-term and more profitable.

Construction-to-Permanent loans are particularly important to NAHB members who often are small business owners. During the recent downturn in the credit markets, NAHB members have found it very difficult to obtain financing for the construction of new homes. As community banks have retrenched from lending to home builders for new home construction, it has become more common for borrowers who want to purchase a newly constructed home to seek construction loans directly from their banks. According to NAHB's Financing Survey, in the second quarter of 2012, 29 percent of respondents said they had built homes financed by a construction-to-permanent loan made to the buyer of the home. Of that 29 percent, 34 percent

said 100 percent of the homes they had built were financed by a construction-to-permanent loan made to the buyer.

Construction loans require close coordination between a bank, the home builder and the homebuyer. NAHB believes this engagement between the parties mitigates the risk; therefore, NAHB supports that the exemption of construction loans from the definition of HRM as sound policy and should be explicitly stated in the rule.

NAHB is Concerned that Requiring an Additional Appraisal Could Cause Delays. (Question 17)

Appraisals are opinions of value. Appraisals are subjective which will result in different opinions of value. Lenders and underwriters will be required to reconcile the two appraisals resulting in a third opinion of value. The proposal does not specify which of the appraisals the lender must rely on and only states that the lender should retain the discretion to select the most reliable valuation, consistent with applicable safety and soundness obligations and prudential guidance. NAHB is concerned that this methodology, while consistent with the interim final rule on valuation independence published by the Board in 2010, contributes to the subjective valuing of properties at a time the industry should be identifying and adopting more objective valuation methods and policies.

The proposed regulation also mandates that lenders give appraisal reports to borrowers three days before closing. Currently, because of the restrictive credit market and the increase in the use of appraisal management companies (AMC), appraisals are being ordered toward the end of the process and NAHB is concerned that home buyers' closings could be delayed unnecessarily. Delayed closings can negatively impact home buyers if their loan locks expire, which is particularly financially harmful in a rising interest rate environment. The additional logistics of requiring a second appraisal will undoubtedly add to the challenge.

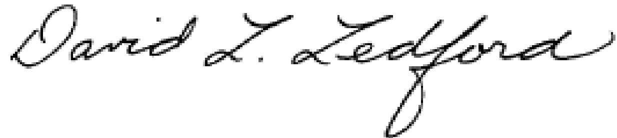
NAHB Supports Exemptions Considered for HRMs in Rural Areas. (Question 19)

NAHB supports the Agencies' proposal to exempt HRMs made in rural areas from the additional appraisal requirement. Many rural communities, as the Agencies point out, have limited resources available to them and the requirement of an additional appraisal from a different appraiser would cause unnecessary burden and in some areas would not even be possible. For example, as the Agencies note, 22 counties in Alaska do not have access to two active appraisers. NAHB also recommends that the Agencies apply this exemption to distressed markets and unique properties, such as log cabins, where the availability of comparable sales is often limited.

Conclusion

Thank you for your consideration of NAHB's comments. NAHB looks forward to working with the Agencies, consumers and industry stakeholders to sustain a responsible and robust lending environment. If you have questions, please contact Steve Linville, NAHB's Director of Single Family Finance, at 202-266-8597 or slinville@nahb.org.

Sincerely,



David L. Ledford