CSBS SINCE 1902
CONFERENCE OF STATE BANK SUPERVISORS

October 15, 2012

Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
RIN 2590-AA58

Office of the Comptroller of the Currency
250 E Street, SW, Mail Stop 2-3
Washington DC, 20219
RIN 1557-AD62

Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street NW.
Washington, DC 20552
RIN 3170-AA11

Arthur M. Pollard
General Counsel
Attention: Comments/RIN2590-AA58
Federal Housing Finance Agency
8th Floor, 400 Seventh Street SW
Washington D.C., 20024

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
RIN 7100-AD90

Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428
RIN 3133-AE04

Dear Sir or Madam,

The Conference of State Bank Supervisors (CSBS) appreciates the opportunity to comment on the proposed rule jointly issued by the Board of Governors of the Federal Reserve System (Board), the Bureau of Consumer Financial Protection (Bureau), the Federal Deposit Insurance Corporation (FDIC), the Federal Housing Finance Agency (FHFA), the National Credit Union Administration (NCUA) and the Office of the Comptroller of the Currency (OCC) or collectively, "the Agencies," to amend Regulation Z to implement a new Truth in Lending Act (TILA) provision mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) concerning appraisals for "higher-risk mortgages." CSBS endorses the rule proposed by the Agencies setting national appraisal standards for loans in which the APR exceeds the Average Prime Offered Rate (APOR) by amounts specified in the proposed rule and loans in which the property was purchased by the seller less than 180 days prior to a new sale. CSBS believes consumers of "higher-risk mortgage loans" will benefit from the increased transparency and reduced cost of the appraisal process.

However, as a matter of policy, CSBS believes regulations should not hinder an insured depository institution's willingness to engage in portfolio lending. Thus, in response to the

Agencies' solicitation of comment on whether other classes of loans should be excluded from the definition of "higher-risk mortgage loan," CSBS advocates that portfolio lending should be exempted from the requirements pursuant to the authority granted to the agencies by TILA section 129(b)(4)(B). Under this authority, the agencies are permitted to exempt a class of loans if they determine that such an exemption would be in the public interest and/or would promote the safety and soundness of creditors. CSBS believes exempting portfolio lending would meet both these criteria. Additionally, to address a separate question posed by the Agencies, CSBS does not condone the use of the Transaction Coverage Rate (TCR) for lenders to calculate whether or not a loan exceeds thresholds which would result in the loan meeting the definition of "higher-risk loan."

PORTFOLIO LENDING

Banks that portfolio loans retain all risk associated with the loan. Ensuring that a property securing a loan is accurately valued is fundamentally in the interest of an institution that retains a loan(s). CSBS therefore believes a statutory requirement to ensure that accurate valuation occurs is redundant and potentially burdensome for some institutions. The introduction of additional compliance costs, combined with the existing margin pressure on portfolio lending in smaller communities may result in local institutions exiting the local market for mortgage lending.

A reduction in the supply of mortgage credit produced by community banks could have a potentially negative impact on consumer access to credit in rural areas and/or small and underserved communities. Such a reduction could also adversely affect the viability, safety and soundness of some institutions, as this key source of revenue would become less attractive. Some smaller institutions may not be able to readily replace this vital source of income. State regulators contend it is in the public interest for the Agencies to exempt loans that are held in portfolio from the definition of "higher-risk loans."

TRANSACTION COVERAGE RATE

The Agencies express concern that a more inclusive finance charge, as proposed in the Bureau's 2012 TILA-RESPA Integrated Mortgage Forms Proposal and 2012 HOEPA Proposal, may push more loans across existing statutory thresholds used to determine whether they are subject to enhanced consumer protection standards. The Agencies note specifically that if the more inclusive finance charge becomes final then it may affect which loans would qualify as higher-risk mortgages in the Interagency High-Risk Appraisal rule.

The Bureau has proposed two alternative methods in the proposals cited above, which include changes to the finance charge, to rectify effects on loans which currently do not meet thresholds but would if a more inclusive finance charge were finalized. The first alternative would be for the Bureau to appropriately amend APR-dependent thresholds to reflect the increase in APR caused by a more comprehensive finance charge. In the second alternative, the Bureau proposes using an alternative rate, "The Transaction Coverage Rate" (TCR). This rate excludes certain finance charges which would be included in the APR. The TCR would be a regulatory facing rate used solely for determining whether a loan crossed statutory thresholds.

The Agencies have asked whether it would be appropriate to use the TCR to mitigate the effects of a more inclusive finance charge.

Although CSBS continues to firmly support a more inclusive APR calculation that more accurately reflects the cost of credit to the consumer[1], CSBS does not support the alternative proposed by the Agencies to use TCR to mitigate the effect of a more inclusive finance charge within the context of the Appraisal proposed rule. CSBS believes it is inconsistent with the nature of Regulation Z to provide an APR to the consumer on disclosure forms but to use the smaller TCR to determine coverage under applicable regulations.[2] It is more transparent to use the APR for both consumer disclosures and for purposes of coverage. As we will discuss further in comments to the CFPB on its proposed rule addressing finance charge adjustments, state regulators suggest the CFPB undergo a national survey to determine a more inclusive finance charge's effect on APR and a reasonable threshold increase thereto. We therefore believe it is in the interest of transparency, consistency and the reduction of regulatory burden and consumer confusion for the Agencies not to utilize the TCR for purposes of this proposed rule.

CONCLUSION

CSBS supports the Agencies' efforts to set national appraisal standards for "higher-risk mortgage loans." CSBS urges that loans held in portfolio by an institution be exempted from enhanced appraisal requirements pursuant to the authority granted to the Agencies by the Dodd-Frank Act. CSBS also discourages the use of the "Transaction Coverage Rate" for determining coverage under numeric thresholds in the event that a more inclusive finance charge is finalized by the CFPB.

Warmest Regards,

John W. Ryan
President and CEO

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[1] CSBS, AARMR, and NACCA also supported a more inclusive finance charge in the Federal Reserve Board's 2009 Closed-End Proposal. *See* http://admin.csbs.org/regulatory/policy/Documents/RegZCommentLetterCSBS,NACCAAARMR.pdf.

[2] CSBS, ACSSS, and AARMR raised this concern in the Federal Reserve Board's 2010 Regulation Z proposal. *See* http://admin.csbs.org/regulatory/policy/Documents/CSBSAARMRACSSSFinalRegZCommentLetter.pdf.