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October 15, 2012

Federal Reserve Docket No. R-1443
Consumer Financial Protection Bureau Docket No. CFPB-2012-0031
Federal Housing Finance Agency RIN 2590-AA58

Re: “Appraisals for Higher-Risk Mortgage Loans” – Questions 27-29

To Whom It May Concern:

I am writing this comment letter regarding the above-reference matter on behalf of the Distressed Property Coalition (DPC), a group of small businesses engaged in the practice of rebuilding communities through the purchase and rehabilitation of distressed residential properties. On behalf of our members, I would like to thank you for the opportunity to offer our views on this important proposed rule.

The above-referenced proposed rule requires a second appraisal for residential properties re-sold in less than 180 days if, among other circumstances, the property is re-sold for a higher value than the acquisition price. The request for comment solicits input on proposed exemptions to this requirement. DPC wishes to respectfully submit proposed exemptions on behalf of distressed property professionals, and to provide supporting data and context in furtherance of our proposed exemptions.

Background

DPC represents small businesses that purchase, rehabilitate and re-sell primarily distressed properties, such as short sales, REOs and deed-in lieu of foreclosure. Homebuyers most impacted by the new second appraisal requirement will overwhelmingly be the distressed property professionals, who usually seek to re-sell a property within six months of purchase. These transactions are essential to rebuilding communities devastated by the housing crisis, providing liquidity to the housing market, and achieving an authentic housing recovery driven by the private market.

Refurbished homes are often an excellent opportunity for less qualified buyers or buyers who lost their home during the housing crisis to purchase a first home. While the higher-risk mortgages pose potential hazards for consumers, it is important to understand that cash buyers

entering an economically distressed neighborhood seeking to rebuild communities are exposed to significant risk as well.

DPC believes that the best motivation and incentive for undertaking the risk of rebuilding at-risk communities is profit. DPC further recognizes that there are opportunists who seek to take advantage of the housing crisis by engaging in deceptive practices at the expense of homebuyers. Fraud prevention measures are always necessary for a properly functioning market, especially during times of crisis, and understanding the methods of the fraudsters is the best way to preclude their activity while at the same time allowing legitimate transactions to progress. Shutting down entire sectors of the housing market is not a sound fraud prevention strategy, and will inevitably do more harm than good.

A foreclosure scam must involve cooperation of an appraiser. The scam artist purchases a distressed property, performs minor repairs, and re-sales it at an inflated price (provided by the appraiser) to an unsuspecting buyers. Freddie Mac has argued that the scam begins with the purchase of the distressed property at an unreasonably low price, but since Freddie Mac sets the price, they would have to be in on the scam, which makes their position senseless. The scam artist usually seeks to re-sell the property within days or at most a month after acquisition for a dramatically inflated price. The scam artist does not want to wait any longer to dispose of the property because the profit goes down as the risk increases. DPC believes this fact is important to understand because the timeline of the second appraisal requirement spans six months, and no scam artist would wait around anywhere near that length of time.

DPC does not believe that all re-sales in less than 30 days are inherently fraudulent, nor does it believe that high profit equals fraud. Housing data supports our position. The following data, furnished in September 2012 by RealtyTrac©, provides information from ten states on the savings a buyer receives when purchasing a foreclosed property in the respective states. The figures are based on the average retail price of a home versus the average price for a foreclosed (REO) property. For example, in Connecticut an REO buyer pays on average 63% less for a foreclosed property when compared to a retail property. The data is prior to any rehab work performed on the residential properties:

Connecticut: 63% **Louisiana: 55%** **Illinois: 50%**
Kentucky: 49% **Ohio: 49%** **Massachusetts: 48%**
Michigan: 46% **Nebraska: 45%** **Pennsylvania: 45%**
Maryland: 45%

Short sale transactions usually sell for 15-20% higher than the REO discount values, but still much less than retail price. These values reflect the housing market reality that these are distressed properties, and the fact that we are in the midst of exiting a massive crisis. These figures are evidence of a crisis, not fraud. Yet, many consumer advocates and housing professionals still wish to ignore these facts.

As recently as June of this year, Freddie Mac Senior Vice President Tracy Mooney cited what she calls the “REO stigma mindset” in a statement on the Freddie website. This comment reflects a mindset that unfortunately remains prevalent in some circles despite all current and

historical data to the contrary: the belief that there is no such thing as a distressed property value. Furthermore, despite data to the contrary (see above), profits on rapid re-sales of property are considered suspicious or outright evidence of fraud, when in fact they are the direct result of the housing bubble.

DPC provides this data and evidence of a prevailing mindset that contradicts the facts and wishes to portray the distressed property professionals who are rebuilding this country as predatory as preface to an important question: What is the purpose of the second appraisal? If the appraiser views the property without correct housing data and with the mindset of Ms. Mooney, none of these transactions will take place. This means high-risk mortgagees will not own homes, and as important, there will be no incentive for distressed property professionals to rebuild our most at-risk communities. Not only will the transactions stop, the housing recovery in the most distressed areas will stop. No one wins in this scenario.

DPC supports consumer protection measures that are based on facts. Balancing consumer protection and legitimate commercial activities is difficult in situations such as this. DPC simply asks that the agencies weigh the facts in this matter as our following recommendations are considered, or present facts of their own that disprove distressed properties have always sold and continue to sell for significantly less than retail properties. The facts tell us that average REO purchase discounts can be as high as 63%, and are over 40% in many states when compared to average retail prices. Average short sale purchase discounts fall into the 40-20% range compared to retail averages. This data is not evidence of fraud, but rather the sober reality of the state of the housing market.

DPC's hope is that the new rules are not used to perpetuate the myth that distressed property values are the product of a conspiracy amongst investors and appraisers. The distressed property discounts have always been reflected in all housing markets, and are exacerbated during times of crisis and recovery. This information must be taken into account during the appraisal process and provided to consumers so that they can make an informed decision for themselves.

Recommendations for Exemptions to Second Appraisal

Before providing its recommendations, DPC would like to comment briefly on some of the proposed recommendations provided in the text of the request for comment. The offer made by consumer advocates allowing an exemption to a second appraisal for re-sales that deliver less than $1,000 profit for the seller seems conjured from thin air. On what housing data is this proposal based? The offer reflects their position that my clients should absorb risk and spend their own money in distressed communities and make no profit, while the consumer groups take credit for revitalizing these communities, at the economic and moral expense of my clients.

DPC also reviewed proposed percentage thresholds for exemptions to the second appraisal. The problem with the percentage threshold as grounds for exemption is that market conditions vary so dramatically from state to state, and neighborhood to neighborhood. Using Maryland as an example, where the spread between the average foreclosure sale price and average retail price is 45%, how is an exemption threshold of 15 or 20% after work is performed on the home fair when the average resale price without rehab works exceeds it by 25-30%?

As for the 180 day time period, DPC can find no data to support this length of scrutiny. Scam artists usually re-sell within a week and no longer than a month. There are dozens of televisions shows demonstrating how legitimate property rehabs can take place within 30-45 days. So if the agencies can provide any evidence justifying a six month timeframe of scrutiny DPC respectfully asks that they do so.

DPC Second Appraiser Exemption Recommendations:

1. All active duty military personnel who receive Permanent Change of Station orders are exempt;

2. All re-sellers who acquired the property through the FHFA Standard Short Sale Program are exempt;

3. All re-sales past 90 days of acquisition date are exempt;

4. If the re-seller acquired the property via short sale, the second appraisal is not required for all re-sales with 20% profit or less;

5. If the re-seller acquired the property via REO sale, the second appraisal is not required for all re-sales with 40% profit or less;

6. The appraisals provided to consumers must contain current data on distressed property purchases within their state, including a comparative analysis of the spread between average distressed property sales and average retail property sales. Furthermore, the information provided to the consumer must acknowledge that these spreads are based on properties that have not been repaired.

Comment Regarding Existing FHA Rules

The request for public comment repeatedly cites the need to be consistent with existing FHA anti-flipping rules as the justification for the actions regarding the second appraisal:

"This approach is consistent with regulations promulgated by HUD to address property flipping in single-family mortgage insurance programs of FHA. *See* 24 CFR 203.37a; 68 FR 23370, May 1, 2003; 71 FR 33138, June 7, 2003 (FHA Anti-Flipping Rule, or FHA Rule)."

In fact, given that these regulations have been nullified by a waiver for the past three years, the approach is completely inconsistent with existing FHA policy on this issue. As FHA eloquently explains in the following release announcing the third consecutive year of instituting a waiver to this rule, these restrictions negatively impact consumers facing foreclosure and pose a massive risk to taxpayers ultimately paying for distressed properties that cannot be sold promptly or even before foreclosure takes place:

HUD No. 11-292 | FOR RELEASE
Lemar Wooley | Wednesday

(202) 708-0685 December 28, 2011

FHA EXTENDS WAIVER OF ANTI-FLIPPING REGULATIONS THROUGH 2012

WASHINGTON – In an effort to continue stabilizing home values and improve conditions in communities experiencing high foreclosure activity, Acting Federal Housing Administration Commissioner Carol J. Galante today extended a temporary waiver of FHA's anti-flipping regulations through 2012. **Read FHA's anti-flipping waiver.**

"This extension is intended to accelerate the resale of foreclosed properties in neighborhoods struggling to overcome the possible effects of abandonment and blight," said Galante. "FHA remains a critical source of mortgage financing and stability and we must make every effort to promote recovery in every responsible way we can."

With certain exceptions, FHA rules prohibit insuring a mortgage on a home owned by the seller for less than 90 days. In 2010, however, FHA temporarily waived this regulation through January 31, 2011, and later extended that waiver through the remainder of 2011. The new extension will permit buyers to continue to use FHA-insured financing to purchase HUD-owned properties, bank-owned properties, or properties resold through private sales. It will allow homes to resell as quickly as possible, helping to stabilize real estate prices and to revitalize neighborhoods and communities.

The extension announced today is effective through December 31, 2012, unless otherwise extended or withdrawn by FHA. All other terms of the existing Waiver will remain the same. The Waiver contains strict conditions and guidelines to prevent the predatory practice of property flipping, in which properties are quickly resold at inflated prices to unsuspecting borrowers. The Waiver continues to be limited to sales meeting the following conditions:

- All transactions must be arms-length, with no identity of interest between the buyer and seller or other parties participating in the sales transaction;
- In cases in which the sales price of the property is 20 percent or more above the seller's acquisition cost, the Waiver will apply only if the lender meets specific conditions, and documents the justification for the increase in value; and
- The Waiver is limited to forward mortgages, and does not apply to the Home Equity Conversion Mortgage (HECM) for purchase program.

Since the original waiver went into effect on February 1, 2010, FHA has insured nearly 42,000 mortgages worth more than $7 billion on properties resold within 90 days of acquisition.

FHA research finds that in today's market, acquiring, rehabilitating and reselling these properties to prospective homeowners often takes less than 90 days. Prohibiting the use of FHA mortgage insurance for a subsequent resale within 90 days of acquisition adversely impacts the willingness of sellers to allow contracts from potential FHA buyers because they must consider holding costs and the risk of vandalism associated with allowing a property to sit vacant over a 90-day period of time. (END)

In conclusion, DPC believes that the provisions provided in the Dodd-Frank Act and this proposed rule merit serious scrutiny and consideration before implementation. Given the current available housing data, DPC feels that all parties must recalibrate what is considered a fair profit for professionals who rebuild communities, or provide credible evidence to support positions

contrary to our findings. Thank you for your consideration. Please feel free to contact me directly at (202) 250-6166 to discuss this matter in additional detail.

Sincerely,

John P. Grant