



September 9, 2013

Office Comptroller of the Currency, Treasury Department
Docket No. OCC-2013-0009; RIN 1557-AD70

Board of Governors of Federal Reserve System
Docket No. R-1443; RIN 7100-AD90

National Credit Union Administration
RIN 3133-AE04

Bureau of Consumer Financial Protection
Docket No. CFPB-2013-0020; RIN 3170-AA11

Federal Housing Finance Agency
RIN 2590-AA58

Federal Deposit Insurance Corporation
Truth In Lending Act (Regulation Z)

Re: Appraisals for Higher-Priced Mortgage Loans – Supplemental Proposal

Dear Sir or Madam:

The American Society of Appraisers (ASA) and the National Association of Independent Fee Appraisers (NAIFA), representing thousands of our nation's leading valuation professionals, appreciate the opportunity to provide our views on the proposed Supplemental rule governing appraisals for higher-priced mortgage loans (HPMLs).¹ ASA and NAIFA are professional appraisal organizations which teach, test and credential qualified individuals in residential and commercial real estate appraisal practice and appraisal review.² Our members who are credentialed in real estate appraisal practice are also state certified and licensed appraisers.

The views of our organizations on the Agencies' Supplemental proposal to exempt additional categories of transactions from Dodd-Frank's appraisal requirements for higher-priced loans are informed by three central factors: First, that these loans, by their nature, are inherently riskier for consumers and lenders than are conventional loans and are not inconsequential in numbers³; Second, that consumers are entitled, as a fundamental right, to understand the market value of

¹ Published in the *Federal Register* of August 8, 2013.

² Additionally, ASA, which is a multi-disciplinary appraisal organization, teaches, tests and credentials its members for professional appraisal practice and appraisal review in business valuation and in personal property valuation (including machinery and equipment, fine art, antiques, gems and jewelry and the contents of offices and homes).

³ Data reported under the Home Mortgage Disclosure Act (HMDA) show that in 2011 approximately 332,000 transactions were reportable as higher-priced mortgage loans.

property (whether real or personal) collateralizing high dollar value loans they incur. The absence of such information severely hinders a consumer's ability to make informed decisions about the fairness of the terms and conditions of a loan, including whether the collateral is sufficient to repay the lender and protect the borrower from additional personal liability in the event of a loan default; and, Third, that professional appraisers, who are by far the most reliable source of market value determinations, are permitted by the Uniform Standards of Professional Appraisal Practice (USPAP) to perform a range of residential valuation services which are less costly than full appraisals.

As a consequence of these factors, we believe that before the Agencies approve any additional exemptions from Dodd-Frank's HPML appraisal requirements, they should ask two critical questions:

(1) How the absence of an appraisal of property securing the largest and most important loan most consumers will ever make (including the purchase of a manufactured home or the refinancing of any residential property) could negatively impact consumer protection and the safety and soundness of loan underwriting; and (2) Why public policy isn't best served by continuing to require professional appraisals for all higher-priced transactions given their inherent riskiness and the availability of less costly alternatives to full appraisals that are still performed by highly skilled professional appraisers.

I. EXECUTIVE SUMMARY

A. Our Organizations Strongly Oppose Any Exemption From the Dodd-Frank Appraisal Requirement Protections for Higher-Priced Loans To Purchase a Manufactured Home – Whether New Or Existing – When the Land On Which The Home is Sited Constitutes Any Part of the Loan Collateral -

(1) Our organizations strongly oppose the Agencies decision, reflected in its January 18th final rule, to exempt from higher-priced loan appraisal requirements loans for the purchase of new manufactured homes when the land on which the home is sited constitutes any part of the loan collateral. **We urge the Agencies to revisit that unjustified decision and reverse it.**

The financing of a manufactured home purchase (when the loan collateral includes the land) is closely related to the purchase of a traditional residential property with respect to the consumer protection interests of borrowers and the safety and soundness of the loan itself. We object to this exemption for a variety of what we believe are important public policy reasons, including the following –

- The market value of a manufactured home collateralizing a HPML is significantly affected by the value of the land on which it is sited – even if the land is not part of the collateral. Although Dodd-Frank allows the Agencies to exempt certain categories of HPMLs from the appraisal requirements if they “determine that the exemption is in the public interest and promotes safety and soundness of creditors,” we do not believe the Agencies have even come close to demonstrating

that the exemption meets these criteria. To the contrary, the proposal undermines safety and soundness and denies crucial transaction information to consumers who finance manufactured home purchases.

As evidence of this conclusion, we point to the fact that the exemption proposed by the Agencies is fundamentally inconsistent with the manufactured home appraisal requirements of FHA, VA, Fannie Mae and Freddie Mac. We find it inconceivable, as a matter of public policy, that the CFPB and the other Agencies would allow borrowers to finance a manufactured housing purchase, when land is any part of the collateral, without the ability to understand the market value of the properties collateralizing the loan.

- The Agencies' January 18th final rule and its proposed Supplemental rule lack public policy consistency. The final rule exempts existing manufactured home loans from the Dodd-Frank HPML appraisal requirements but only if the loan is collateralized solely by the chattel and not by the land on which it is sited. The Supplemental rule proposes to exempt the appraisal requirements for new manufactured homes even if the high-priced loan is secured by the real estate on which it is sited. We fail to understand the public policy rationale for this markedly different treatment and are concerned that this rather remarkable inconsistency will confuse consumers, manufactured home buyers, lenders, state appraiser regulatory agencies and the professional appraisal community.

- (2) When the collateral for a new manufactured home loan is only the home itself and not land, we do not believe that a professional appraisal by a state certified or licensed real estate appraiser is necessarily required. However, because the value of the manufactured home itself can be significantly affected by the real estate on which it is sited (even if the land is not owned by the purchaser or is otherwise not part of the collateral), our organizations strongly support the need for an independent, third party valuation of the home, either by a credentialed personal property appraiser with education, training and experience in valuing manufactured homes or in accordance with the NADA Manufactured Housing National Appraisal System.

We believe the interests of consumers and financial institution safety and soundness will best be served by a final rule which closely tracks the manufactured home appraisal requirements of FHA, VA, Fannie Mae and Freddie Mac even when the manufactured housing loan is not collateralized by land. We are concerned that the approach proposed by the Agencies undermines consumer protection and fosters unnecessary risk.

B. Our Organizations Oppose An Exemption From the HPML Appraisal Requirements of Dodd-Frank For Refinancings That The Agencies Characterize as “Streamlined” –

While our organizations support the concept of “streamlined” refinancing (including the HARP program) and acknowledge the importance of the Agencies' efforts to narrow this category of exemption from the HPML appraisal requirements (e.g., no negative amortization; the owner of the refinance obligation is the same as the owner of the

existing obligation; no balloon payment; no interest only loans; use of proceeds only to pay off the outstanding principal balance and to pay closing or settlement charges), we nevertheless have concerns about it and urge its removal from the final rule.

Our objections involve the impact of the proposed exemption on large numbers of consumers who may consider a refinancing in a reduced interest rate environment and who are eligible for protection under Dodd-Frank's high priced mortgage loan appraisal requirements.⁴ They also involve consideration of the substantial potential costs to consumers even under a "streamlined" refinance – consumer costs not discussed in the Agencies' commentary on the Supplemental rulemaking proposal. While refinancing a mortgage at a lower interest rate can often be highly advantageous to consumers, they are not cost-free. Most experts acknowledge that so-called "no cost refinancing" is essentially a myth. Even the CFPB advises consumers that mortgage lenders who advertise a "no-cost" or "no closing cost" refinance product will charge the consumer a higher interest rate to cover the cost of making the loan or adding the closing costs to the loan amount – both of which can play out over the life of the loan and represent significant dollar costs. The Federal Reserve, in its "Consumer's Guide to Mortgage Refinancings" describes a wide range of costs and fees that lenders may choose to charge the borrower, including a loan application fee; a loan origination fee; fees for points; a new title search fee, appraisal fee and survey fee. In some cases, a refinanced loan with lower monthly payments also involves an extended mortgage term considerably longer than the existing one.

We believe that a key component of a consumer's decision whether to pay the lender-imposed costs of a refinancing – even one labeled as "streamlined" – and accept other possible changes to the terms and conditions of the refinanced mortgage, is the market value of property collateralizing the loan at the time of the refinance. Given the potentially substantial costs to consumers to refinance (some apparent, but some not), and other possible changes, we believe the value of the collateral property at the time of a refinance is information useful to borrowers, even if, as the Agencies' commentary suggests, the lender regards the collateral value as unimportant. If the streamlined refinancing exemption from Dodd-Frank's HPML appraisal requirements proposed by the Agencies is adopted, this information would not be available to the consumer for his or her consideration as a required part of the lender's refinance offer. That would be very regrettable.

For the reasons discussed above, we urge the Agencies not to adopt the streamlined refinancing exemption in their final rulemaking.

C. Our Organizations Do Not Oppose An Appraisal Requirement Exemption for Extensions of HPML Credit of \$25,000 or Less But Urge that the Exemption Not Apply To Transactions Falling Within the Agencies' Definition of "Flipping" –

⁴ According to information published by the Bureau of Consumer Financial Protection in its January 30, 2013, *Federal Register* final rule on "Ability-to-Repay and Qualified Mortgage Standards Under Truth in Lending, "refinancings accounted for approximately 44 percent of the higher-priced mortgage loan market" in 2011 – about 146,000 transactions.

Notwithstanding our belief in the importance, to consumers and to safety and soundness, of a professional appraisal of collateral property in all mortgage transactions, we do not generally object to this proposed exemption. However, we strongly urge that this exemption not be allowed to apply in any transaction which is covered by the anti-flipping provisions of Dodd-Frank and the proposed HPML rule (triggering the additional appraisal requirement): That is, if either the seller is reselling the property within 90 days of acquiring it and the resale price exceeds the seller's acquisition price by more than 10 percent; or, is reselling the property within 91 to 180 days of acquiring it and the resale price exceeds the seller's acquisition price by more than 20 percent. The harmful effects of flipping on the mortgage markets and on safety and soundness are not inconsequential even for transactions of \$25,000 or less.

II. BACKGROUND

The six federal agencies referenced above are proposing changes to the final rule they issued on January 18, 2013.⁵ That rule established a number of exemptions from the Dodd-Frank appraisal requirements for higher risk or higher priced mortgage loans. In a letter dated October 10, 2012, our organizations filed joint comments on the Agencies' original proposal to implement Dodd-Frank's "higher-risk mortgage" appraisal requirements.⁶ That comment letter expressed support for some of its provisions but also expressed serious concerns with others. The Supplemental rule proposes several additional exemptions.

The January 18th final rule and the Supplemental proposal implement amendments to the Truth-In-Lending Act (TILA) required by Title XIV, Subtitle F ("Appraisal Activities") of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which established appraisal requirements for "higher-risk" mortgage loans.⁷ The January 18th final rule exempted from the appraisal requirements mortgages meeting the definition of a "Qualified Mortgage" as well as reverse mortgages. Additionally, it exempted (1) Loan transactions secured solely by a new manufactured home (including land); (2) Loan transactions secured by a mobile home, boat, or trailer; (3) Loan transactions to finance the initial construction of a dwelling; and, (4) Loans with maturities of 12 months or less if its purpose is a "bridge" loan to acquire the consumer's principal dwelling.

The Supplemental rule proposes additional exemptions from the higher-priced loan appraisal requirements, as follows: (1) Loan transactions secured solely by an existing manufactured home (and not land); (2) "Streamlined" refinances which meet certain conditions including that the refinance does not result in negative amortization and that its proceeds may only be used to pay off the outstanding principal balance on the existing obligation and to pay closing or settlement charges; and (3) Extensions of credit of \$25,000 or less, indexed annually for inflation. Dodd-

⁵ Published in the *Federal Register* of February 13, 2013.

⁶ Published in the *Federal Register* of September 5, 2012.

⁷ New TILA section 129H ("Property Appraisal Requirements") established by Dodd-Frank uses the term "higher-risk mortgage" which is generally defined as a closed-end residential mortgage loan secured by a principal dwelling with an annual percentage rate (APR) that substantially exceeds (under a formula set out in section 129H) the average prime offer rate (APOR) for a comparable transaction as of the date the interest rate is set. The interest rate thresholds are substantially similar to rate triggers currently in Regulation Z for "higher-priced mortgage loans".

Frank's amendments to the Truth-In-Lending Act authorizes the Agencies to jointly exempt a class of loans from the higher-priced mortgage appraisal requirements if they determine that the exemption is in the public interest and promotes the safety and soundness of creditors.

Our views on the higher-priced mortgage Supplemental proposal are set forth in the Executive Summary above. Our responses to a number of the questions asked by the agencies can be found immediately below.

III. RESPONSES TO AGENCIES' QUESTIONS

Question 2: The Agencies request comment on their proposed expansion of the definition of qualified mortgages (which are exempted by statute from the HPML appraisal requirements) to cover qualified mortgages as defined by HUD, VA, USDA, and RHS under their TILA section 129C authority. While our organizations do not oppose this expansion, we express the hope that these other agencies (understanding that even qualified mortgages sometimes end up in default and appreciating the importance of professional appraisals to consumer protection and to the safety and soundness of loan underwriting), will modify the definitions of what constitutes a qualified mortgage, in a way that permits the use of appraisals.

Question 3: As stated in our Executive Summary, our organizations strongly oppose any appraisal exemption for manufactured housing HPMLs – whether the home is existing or new – when land is any part of what secures the loan. In situations where the manufactured home HPML is collateralized only by the chattel property and not land, the Agencies seek comment “on whether consumers...would benefit by receiving from the creditor a unit value estimate from an objective third-party source, such as a cost guide.” We associate ourselves with the views expressed by consumer and housing advocates on this issue. Since the value of a manufactured home can be significantly affected by its site location, the final rule should require that the creditor furnish a unit value estimate from an objective third-party who is either a credentialed personal property appraiser with experience and training in valuing manufactured homes; or an individual whose valuation adheres to the NADA Manufactured Housing National Appraisal System (NAS).

Questions 4 – 8: Our organizations strongly oppose an HPML appraisal exemption for loans to purchase a new manufactured home when land is part of the loan collateral. In such situations, the market value of the sited home should be performed by a state certified (or a licensed) appraiser. If the collateral for a manufactured home purchase is the chattel only, the unit should be valued by a properly credentialed personal property appraiser or by an individual who adheres to NADA's NAS. The appraised value of a sited manufactured home by a professional appraiser or the estimated value of the unit only by a NADA compliant individual should be delivered to the prospective borrower as early in the loan underwriting process as possible. The importance of this information to prospective manufactured home buyers who finance the purchase, is extremely high.

Questions 9 - 10: Our members with substantial experience in valuing manufactured homes believe that the site locale can have and frequently does have a significant influence on the value of the unit itself. We know of no “cost services... that account adequately for price differences in

location” and no “readily-accessible, publicly available information...that consumers could use to determine whether their loan amount exceeds the collateral value in a new manufactured home chattel transaction.” In some areas, Multiple Listing Services might include manufactured housing asking prices, but it is important to understand MLS listings are very uneven for this category of property depending on locale. Moreover, the price of a residential property offered for sale and reported on the MLS network is often significantly different from the market value of real property. The same would be true for manufactured housing listed on the MLS system.

Question 11: The Agencies request comment on “potential burdens and costs” of requiring that objective third party valuation information be provided to manufactured home buyers in situations where the chattel only (and not land) serves as collateral for the loan. Given the importance of the location of the sited manufactured home to its chattel value, we believe the importance of this third party information to consumers (and to lenders) far outweighs the costs and, in the eyes of some, the so-called “burden” of this service.

Question 12 – 13: Members of our organizations who are experienced in appraising the value of manufactured homes and land confirm that USPAP-compliant appraisals are regularly performed for this purpose; that professional appraisers who offer this service are widely available; and that appropriate comparable properties (whether manufactured homes or non-manufactured homes) can be readily found. USPAP’s protocols of professional appraisal practice, including interior inspections, are entirely appropriate to value manufactured homes and land. Professional valuations of manufactured homes and land, by state certified and licensed appraisers, should be required by the Agencies. In this regard, we want to re-emphasize that a range of options exist for services provided by experienced professional appraisers that should lessen concerns that are occasionally expressed regarding the cost of an appraisal. In the final analysis, the cost of a professional appraisal is relatively small compared to the value provided to borrowers and to loan underwriting safety and soundness.

Question 14: The Agencies request data “on the extent to which a USPAP-compliant real property appraisal with an interior property inspection would be of comparable cost to, or more or less expensive than, a USPAP compliant appraisal of a lot combined with an invoice price for the home unit.” We do not believe the question is relevant to the important public policy decision the Agencies must make because the proper process for valuing a manufactured home and the real estate on which it is sited does not permit adding the invoice price of the manufactured home to a separate valuation of the real estate. The manufactured home and the land must be valued as a single item of real property.

Question 15: As stated in our response to an earlier question, we believe that the value of a professional appraisal to purchasers of manufactured homes and land, far outweigh any arguments that this basic consumer protection constitutes a “burden” either on the consumer (who generally pays for the appraisal) or on the creditor. Additionally, professional appraisals of property collateralizing loans safeguards the interests of consumers and promotes safety and soundness.

Question 17: This question involves the financing of a manufactured home purchase when only the chattel property (and not land) secures the loan. It seeks comment on the Agencies

observation that some jurisdictions classify such a transaction as involving personal property while others regard it as real property. We are not prepared to comment on how a state's determination that this transaction involves real property (and not personal property) would affect who is or is not qualified to perform a valuation; what legal obligations might exist under state law depending on the classification; and, how this might impact federal requirements established by the Agencies.

Questions 18, 20 and 21: The agencies request comment on whether the additional category of exemption from an HPML's appraisal requirements involving an existing manufactured home and not land should be conditioned "on the creditor obtaining an alternative valuation (i.e., a valuation other than a USPAP- and FIRREA-compliant real property appraisal with an interior property inspection) that is tailored to estimating the value of an existing manufactured home without land and providing a copy of it to the consumer." Earlier in this comment letter, our organizations stated that while we do not object to the valuation of manufactured homes and not land by persons other than certified or licensed real estate appraisers, we believe that consumers are nevertheless entitled to an independent third party determination of the value of the chattel which could depend, in part, on where it is sited. In this regard, we have suggested that reliance on a competent personal property appraiser or on an individual in compliance with NADA's Appraisal System, be mandated. We have also urged that the Agencies' final regulation on HPMLs for manufactured housing – whether with or without land – track the manufactured home appraisal requirements of HUD/FHA, VA, Fannie Mae and Freddie Mac.

Question 22: The Agencies seek comment on the availability of "comparable sales data for appraisers to use in an appraisal of a manufactured home alone, without land." We do not believe that this question is relevant to the decisions the Agencies must make based on our belief that the value of the manufactured unit is always dependent – often to a substantial degree – on the real estate where it is sited. Accordingly, there are no "cost guides" that could or should substitute for a professional appraisal or comparable service even if the collateral was solely the chattel itself. We do want to be clear in our view that there are comparable properties available to professional appraisers to value manufactured homes, but which necessarily include the value of the real estate where the home is sited.

Questions 24 – 25: The Agencies ask a series of questions about USPAP's personal property appraisal standards and whether they would be relevant as an "appropriate condition for an exemption from the HPML appraisal rules..." As we have said throughout this comment letter, our organizations strongly oppose any exemption from the HPML's appraisal rules in situations where the manufactured home and land collateralize the loan. In situations where land is not involved in the manufactured home loan transaction, we have stated our support for an appraisal of the unit by a credentialed personal property appraiser, pursuant to USPAP, or by a NADA-compliant individual. Even when the credit involves both the unit and land, there may on occasion be a role for a credentialed personal property appraiser to assist the real estate appraiser in valuing the unit and land as one property. Though not commonplace, the real estate appraiser and the personal property appraiser could find themselves working together.

If there are any questions about the views expressed in this comment letter or if you need further information about our views, please contact the government relations representative for ASA and

NAIFA, Peter Barash (202-466-2221 or peter@barashassociates.com) or ASA's Director of Government Relations, John D. Russell (703-733-2103 or jrussell@appraisers.org).

Sincerely,
American Society of Appraisers
National Association of Independent Fee Appraisers