Federal Housing Finance Agency
Eighth Floor, 400 Seventh Street, SW
Washington, DC 20024
United States
www.fhfa.gov

Chris Barnard

10 September 2012

- 12 CFR Part 1222-Appraisals: RIN 2590-AA58
- Truth in Lending Act (Regulation Z): Appraisals for Higher-Risk Mortgage Loans

Dear Mr. Pollard.

Thank you for giving us the opportunity to comment on your Proposed rule: Appraisals for Higher-Risk Mortgage Loans.

The Board, Bureau, FDIC, FHFA, NCUA and OCC (collectively, the Agencies) are proposing to amend 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" that was added to TILA as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank).[1] For mortgages with an annual percentage rate that exceeds the average prime offer rate by a specified percentage, the proposed rule would require creditors to obtain an appraisal or appraisals meeting certain specified standards, provide applicants with a notification regarding the use of the appraisals, and give applicants a copy of the written appraisals used.

I strongly support the proposed rules, which will act to improve reliability, robustness and accuracy in lending decisions; reduce default risk; increase standardization and transparency in the appraisal process; and improve overall market efficiency. The proposed rules will benefit both covered persons and consumers. In particular, individual consumers infrequently engage in real estate transactions, which are generally very high value transactions. It is therefore vital that consumers are able to rely on robust and accurate property valuations when making price determinations.

[1] Section 1471 of Dodd-Frank establishes a new TILA section 129H, which sets forth appraisal requirements applicable to higher-risk mortgages. Dodd-Frank defines "higher-risk mortgage" as a closed-end consumer loan secured by a principal dwelling with an APR that exceeds the APOR by 1.5 percent for first-lien loans, 2.5 percent for first-lien jumbo loans, or 3.5 percent for subordinate-liens. Such higher-risk mortgage excludes qualified mortgages, as well as reverse mortgage loans that are qualified mortgages, where qualified mortgage is defined by TILA section 129C.

Transaction coverage rate

In 2010 the Board introduced a new metric, known as the "transaction coverage rate" (TCR),[2] for determining coverage of the "higher-priced mortgage loan" protections of Regulation Z to be used in place of a transaction's APR, which does not reflect the additional charges that are reflected in the disclosed APR under the more inclusive finance charge definition proposed by the Board in its 2009 Closed-End proposal,[3] and later included in the Bureau's 2012 TILA-RESPA proposal[4]. The proposed rule defines a higher-risk mortgage under two alternatives: Alternative 1 compares the annual percentage rate (APR) with the average prime offer rate (APOR) and Alternative 2 compares the TCR with the APOR. I would not support Alternative 2 for the following reasons:

- Questionable authority: the Agencies would rely on their authority under section 1471 of Dodd-Frank[5] to exempt a class of loans from the requirements of the rule. I question whether such class of loans has been defined, or objectively exists, and whether the exemption authority granted by Dodd-Frank was intended to be used in this way. I also question whether the proposed exemption is in the public interest, or would promote the safety and soundness of creditors.
- Lack of data: the proposed rule states that: "A simpler and more inclusive finance charge, however, would increase the APR for most mortgage loans. However, the Agencies currently lack sufficient data to model the amount by which this change would increase the APR or how the increase in turn would affect the number of loans that will exceed the statutory threshold for higher-risk mortgages."[6] Without supporting data, the rationale for introducing the TCR is neither sufficient nor complete.
- TCR promotes structuring and form over substance: identical loans from different lenders would be treated differently depending on how much work each lender outsources, despite both loans having the same APR and cost to the consumer. TCR is therefore not a robust measure to compare against APOR in order to define a higher-risk mortgage.

For the above reasons, I would support Alternative 1. This is consistent with both public interest and the purpose of the Truth in Lending Act.

Yours sincerely

C.R.B.

Chris Barnard

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[2] See Proposed Rule, Regulation Z; Truth in Lending, 75 FR 58660.
[3] See Proposed Rule, Truth in Lending, 74 FR 43241.
[4] See Proposed Rule, Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z), 77 FR 51143.
[5] This states that: "The agencies listed in subparagraph (A) may jointly exempt, by rule, a class of loans from the requirements of this subsection or subsection (a) if the agencies determine that the exemption is in the public interest and promotes the safety and soundness of creditors."
[6] See Proposed Rule, Appraisals for Higher-Risk Mortgage Loans, 77 FR 54730.