October 22, 2010

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

RE: Docket No. R-1392 and RIN No. AD 7100-AD54

The Mortgage Bankers Association[1] (MBA) appreciates the opportunity to comment on the subject notice of proposed rulemaking published by the Board of Governors of the Federal Reserve System (Board).

To comply with the Dodd–Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), the Board proposes to change its annual percentage rate (APR) threshold to determine when escrow accounts are required on so-called "jumbo loans." Specifically, the Board proposes that escrow accounts must be created and maintained when a "jumbo loan's" APR exceeds the average prime offer rate by 2.5 percentage points or more. Today, the Board does not distinguish between conforming and jumbo loans for purposes of imposing its mandatory escrow requirement. All first lien loans secured by the borrower's principal dwelling with an APR that exceeds the average prime offer rate by 1.5 percentage points are required to maintain escrow accounts under the Board's higher-priced loan rules. In addition to other issues, MBA's comments focus on the Board's definition of a "jumbo loan."

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

MBA Supports the Board's Proposal with Clarification

MBA supports the intent of the proposal because it recognizes market pricing differentials between conforming and jumbo loans. However, MBA believes that the final rule should better define a jumbo loan and, thus, which loans are subject to the new thresholds in accordance with Dodd-Frank. Specifically, the rule should clarify that the new 2.5 percentage point threshold applies to first mortgage loans having an original principal obligation amount that exceeds $417,000 for one-unit properties (adjusted annually and for loans with two-to-four units).

Section 1461 of Dodd-Frank is clear that the 2.5 percentage point threshold applies to single-unit loans with principal balances above $417,000 (and to two-to-four-family residences with higher balances) irrespective of any temporary higher loan limits or the application of the high-cost provisions of the Federal Home Loan Mortgage Corporation Act (e.g. the 10th and 11th sentences of Section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act).

TILA Section 129D(b)(3)(B) as enacted by Section 1461 of Dodd-Frank provides that an escrow account is required if:

> "(3) The transaction is secured by a first mortgage or lien on the consumer's principal dwelling having an original obligation amount that—
> . . . .
> "(B) exceeds the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of applicable size as of the date such interest rate set, ***pursuant to the sixth sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)),*** and the annual percentage rate will exceed the average prime offer rate as defined in section 129C by 2.5 or more percentage points, or . . ." (*Emphasis Added.)*

The sixth sentence of Section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act provides:

> "Such limitations shall not exceed $417,000 for a mortgage secured by a single-family residence, $533,850 for a mortgage secured by a 2-family residence, $645,300 for a mortgage secured by a 3-family residence, and $801,950 for a mortgage secured by a 4-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning after the effective date of the Federal Housing Finance Regulatory Reform Act of 2008, subject to the limitations in this paragraph."

Congress did not refer to the temporary higher loan limits established by the Economic Stimulus Act of 2008[2] or to the 10th or 11th sentences of the Federal Home Loan Mortgage Corporation Act, which provide adjustments for high-cost areas. We, therefore, urge the Board to define a jumbo loan with a specific reference to the sixth sentence of the Federal Home Loan Mortgage Corporation Act mentioned above and clarify that the temporary loans limits and high-cost-area loan limits do not apply.

Notwithstanding the clear language of Dodd-Frank, the Board's proposal has numerous provisions that confuse the matter. For example, the preamble defines a conforming loan as follows:

> "The *current* maximum principal balance for a mortgage loan to be eligible for purchase by Freddie Mac (or Fannie Mae, which uses the same loan-size limit), assuming a single-family property *that is not located in any of various designated "high-cost" areas,* is $417,000."[3] *(Emphasis added.)*

Likewise, the proposed staff commentary defines a jumbo loan as "a loan with a principal balance that exceeds the *current* maximum loan amount for loans eligible to be purchased by Freddie Mac as of the date the transaction's rate is set."[4] (Emphasis added.) The Section-by-Section Analysis has a similar reference to the "*current* maximum loan balance for loans eligible for sale to Freddie Mac as of the date the transaction's rate is set."[5] The preamble also states: "Loans that are not eligible for purchase by Freddie Mac or Fannie Mae because their loan sizes are too great are widely referred to in the mortgage market as 'jumbo' mortgages. Hence, the term 'jumbo' is used in this proposed rule to refer to such loans."[6]

Most importantly, the section to be codified defines a jumbo loan subject to the 2.5 percentage point threshold as:

> "a transaction with a principal balance at consummation that exceeds the maximum principal obligation in effect as of the date the transaction's interest rate is set for such a transaction to be eligible for purchase by Freddie Mac pursuant to section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1454(a)(2)..."[7]

By referring to the "current maximum balance," "loans not eligible for purchase by Freddie Mac or Fannie Mae," "high-cost areas" and "section 1454(a)(2)" in its entirety,

---

[2] P. L. 110-185, Title 11, 122 Stat. 613, Feb. 13, 2008.
[3] 75 Fed Reg 58506 (Sept. 24, 2010).
[4] Id. at 58508.
[5] Id.
[6] Id. at 58506.
[7] Id. at 58508.

rather than the sixth sentence of that paragraph, as provided in Dodd-Frank, the Board implies that the definition of a jumbo loan for purposes of requiring escrow accounts is subject to the temporary loan limits and high-cost area adjustments.

If the temporary loan limits applied, the end result would be to define a jumbo loan today as only those loans above $729,750 (for one-unit properties; higher limits apply to two-to-four-unit properties) in the contiguous U.S. and Puerto Rico. It is important to note, however, that Dodd-Frank does not reference Sections 201 and 202 of the Economic Stimulus Act of 2008, which created the temporary loan limits and, therefore, cannot be read to incorporate it. Clearly the Board recognizes this fact by supplying examples using a $417,000 loan limit, but yet, the preamble refers to "current" loan limits.

If the Board also applies the high-cost area limits created by the Housing and Economic Recovery Act (P.L. 110-289, Div A, Title 1, Subtitle B, §1124, July 30, 2008), the result would be to limit the definition of a jumbo loan in Alaska, Guam, Hawaii, and the U.S. Virgin Islands to loans with principal balances above $938,250 (for one-unit properties; higher limits apply to two-to-four-unit properties). Once the temporary loan limits expire (e.g. the $729,750 limit for one-unit property) on September 30, 2011, the definition of "jumbo loan" would vary by location and could be as high as $625,500 (for one-unit properties) in the contiguous U.S. and Puerto Rico, and remain $938,250 in Alaska, Guam, Hawaii, and the U.S. Virgin Islands. Such a definition would not be consistent with the language of Dodd-Frank.

Given the Dodd-Frank reference to the sixth sentence of the Federal Home Loan Mortgage Corporation Act and current market pricing, we recommend that the Board define a jumbo loan as:

> "a loan with a principal balance at consummation that exceeds $417,000 for a mortgage secured by a single-family residence, $533,850 for a mortgage secured by a two-family residence, $645,300 for a mortgage secured by a three-family residence, and $801,950 for a mortgage secured by a four-family residence as adjusted annually."

Redefining "Higher-Priced Loans"

Considering Congress's recognition in Dodd-Frank of the fact that loans with principal balances above the conforming loan limits carry a higher interest rate, MBA urges the Board to reconsider its current definition of "higher-priced" loans in that light. Today the Board does not take into consideration the higher rates on loans that are above

$417,000 and applies an across-the-board 1.5 percentage point threshold to determine when a first-lien mortgage is "higher-priced."[8]

In previous comments to the Board, MBA requested that the Board recognize the rate differential for jumbo loans so that such loans are not inadvertently categorized as higher-priced and subject to the specific higher-priced restrictions (ability to repay test, prepayment restriction, and mandatory escrows) or treated as higher-priced loans under the Home Mortgage Disclosure Act. Pending the countless rules that will be needed to implement Dodd-Frank, the Board should consider applying a 2.5 percentage point threshold for determining when a jumbo loan is a higher-priced mortgage under its existing rules.

Other Dodd-Frank Escrow Requirements

The Board's proposed rule addresses only the interest rate thresholds for determining when escrows are required under Dodd-Frank. The proposal states that the Board intends to implement the other segments of the new mandatory escrow requirements at a later date. In exercising its rulemaking authority, we ask the Board and the Bureau of Consumer Financial Protection to provide specific guidance on the following escrow issues in Dodd-Frank:

- Five-year minimum mandatory escrow requirement, including various exemptions;
- Payment of interest on escrows;
- Optional exemptions for creditors in rural areas, portfolio loans, small volume originators;[9]
- Optional adjustments to the mandatory escrow categories; and
- General implementation and effective dates.

Effective Date of the Final Rule

The Board also seeks input on whether the final rule should be effective immediately upon publication. While MBA supports the Board issuing a final rule in advance of other related escrow and higher-priced and high-cost mortgage provisions of Dodd-Frank, compliance should be voluntary until other Dodd-Frank rules become effective. Considering the need for systems enhancements and training, it is extremely difficult to

[8] 12 CFR 226.35(a)(1).
[9] The Board's Regulatory Flexibility Analysis seeks input on the impact of this proposal on smaller entities. We presume the Board will address the Dodd-Frank exemptions in a separate rulemaking and the public will have the opportunity to raise concerns about the broader impact of mandatory escrows on small entities. As a result, MBA is not commenting on the Dodd-Frank exemptions here.

implement any rule on the date it is published. In the interest of our members and the consumers they serve, we ask that implementation of new requirements occur on an orderly and coordinated basis to minimize costs. Many of Dodd-Frank's provisions are intertwined, making orderly implementation all the more important. By allowing voluntary compliance until the other sections of Dodd-Frank are finalized, both concerns are addressed.

Thank you for your consideration of these comments. Please feel free to contact Vicki Vidal, Associate Vice President of Loan Administration, at (202) 557-2861 or Ken Markison, Regulatory Counsel, at (202) 557-2930 or with any questions.

Most sincerely,

John A. Courson

John A. Courson
President and Chief Executive Officer