July 21, 2011

Board of Governors of the Federal
Reserve System
Attn: Jennifer J. Johnson, Secretary
20th Street and Constitution Avenue, NW
Washington, DC 20551
Submitted electronically via www.regulations.gov

Re: Regulation Z; Docket No. R-1417; RIN No. 7100-AD-75

DHI Mortgage Company, Ltd. (DHIM) appreciates the opportunity to comment on the Notice of Proposed Rulemaking (Proposed Rule) issued by the Board of Governors of the Federal Reserve System to amend Regulation Z, which implements the Truth in Lending Act (TILA), regarding proposed ability to repay standards and the definition of a qualified mortgage (QM) pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

DHIM is a subsidiary of D.R. Horton, Inc. (DR Horton), the largest homebuilder in America by units closed for the last nine consecutive years. DHIM employs approximately 500 people in 20 states, while D.R. Horton employs approximately 2,400 employees in 25 states across the country. DR Horton also owns several title agencies operating in 6 states under the name of DHI Title, therefore DHIM is also an affiliate of DHI Title.

The primary mission of DHIM is to facilitate the financing and sale of new D.R. Horton homes, and provide a fair price, quality loan product, and excellent service experience for every consumer. DR Horton and DHIM consumers are primarily first time and first time move-up homebuyers.

The Proposed Rule requests comments on various aspects of the proposed rule and specifically requests comment on two alternative approaches for defining a QM. DHIM would like to begin by addressing the Proposed Rule's request for comments as they pertain to the alternative definitions proposed.

QM Alternative 1 and Alternative 2

The Proposed Rule acknowledges that the Dodd-Frank Act is unclear with regard to whether a QM supplies a safe harbor from or a rebuttable presumption of compliance with the general ability to repay analysis requirement. While DHIM appreciates the attempt to solicit public comment by supplying two alternatives consisting of a safe harbor alternative and a rebuttable presumption alternative, we respectfully suggest that the definitions and the afforded protection from liability for each alternative provided do not appear to be logically formulated.

Alternative 1, which would operate as a legal safe harbor, defines a QM with requirements that lack general ability to repay standards, such as the borrower's:

- Employment status
- Monthly payments for simultaneous liens
- Current debt obligations
- Total debt to income (DTI) or residual income
- Credit history

Alternative 2 contains all of the requirements of Alternative 1, with the addition of the reasonable ability to repay standards listed above. However, it would only provide a rebuttable presumption of compliance. DHIM questions the logic behind offering reduced protection from liability for lenders who comply with the more conservative standards, and asserts that doing so will result in increased cost of loans for consumers.

DHIM suggests that the Proposed Rule combine aspects of the two proposed Alternatives, which would ultimately provide for:

- the most protection and the best price for consumers,
- the highest underwriting standards to ensure quality loans and
- the most protection from liability for lenders.

The combination would consist of the ability to repay analysis criteria required by Alternative 2, with the safe harbor protection of Alternative 1. This would satisfy the intent of the Proposed Rule to provide an incentive for lenders to originate loans that are QMs, while ensuring that loans have been underwritten with the highest standards, including consideration of the consumer's ability to repay.

DTI Ratio Consideration

DHIM agrees with the concerns raised in the Proposed Rule regarding the establishment of DTI ratios and/or residual income within the definition of the QM. The Proposed Rule correctly recognizes that the DTI ratio generally does not have significant predictive power of loan performance. Certain consumers with higher DTI ratios may have additional compensating factors that would effectively enable them to repay their loans. However, if DTI ceilings were codified in regulation, this would essentially disqualify this population of borrowers from obtaining a QM, thus likely increasing their interest rate or the general availability of credit altogether.

Widely accepted underwriting standards have established ceilings for DTI ratios with certain known compensating factors that, when added to the underwriting analysis, allow qualified borrowers to obtain credit. The Proposed Rule should allow underwriters and lenders to retain discretion to use their sound judgment when evaluating each individual consumer's loan application. Each transaction is complex and contains multiple variables that, when isolated, may be cause for concern, but when viewed as a whole result in a different conclusion. Underwriters have at their disposal guidance from Federal Governmental agencies, GSE's and investor specific guidelines, as well as the use of Automated Underwriting Systems ("AUS"). The Proposed Rule suggests that the use of an AUS should be a safe harbor, not a presumption of compliance, and with the inclusion of ability to repay standards, DHIM strongly supports this suggestion.

The Proposed Rule requests comments on what criteria should be included in the definition of the QM. DHIM generally supports the definition of the QM as proposed, subject to our comments above. However, we address below certain requests for comment regarding underwriting specific criteria contained within the QM definition, which we feel are critically material in nature.

Points and Fees

Under the Proposed Rule, the definition of "points and fees" includes:

- Mortgage insurance premiums in excess of FHA provisions,
- All compensation paid directly or indirectly by a consumer or creditor to a loan originator, and
- Any prepayment penalty on the subject transaction on the existing loan if it is refinanced by the same creditor.

The Proposed Rule excludes from the calculation of points and fees:

- Any bona fide third party charge not retained by the creditor, loan originator or an affiliate of either, and
- Certain bona fide discount points.

DHIM will comment on each individual bullet point above. We would also like to note that there appears to be a discrepancy between the definition of "points and fees" as defined with respect to Qualified Residential Mortgages (QRMs) under the proposed risk retention rule when compared to the definition applicable to QMs under the Proposed Rule. The discrepancy relates to whether or not bona fide discount points are included in the calculation. DHIM concurs with the QM definition, as we believe that bona fide discount points should not be included in the definition of points and fees.

Mortgage Insurance:

DHIM concurs that mortgage insurance premiums should not be included within the definition of points and fees. FHA loans by regulatory design will have automatic QM status. Private mortgage insurance for conventional loans serves the same purpose as FHA insurance. It is inconsistent to exclude FHA insurance and include the premium for mortgage insurance on conventional loans. Mortgage insurance is a bona fide third party charge not retained by the creditor. To include this in the points and fees definition would likely result in the failure of the majority of conventional loans to obtain QM status. This in turn would drive up rates for consumers as well as steer borrowers toward FHA loans. This is contrary to the government's affirmative statement that the role of the FHA must be reduced in the lending marketplace. This position can be further strengthened when considering VA, USDA and some state agency loans. As the Proposed Rule acknowledges, VA and USDA representatives have expressed a concern that upfront charges for guaranties offered under VA, USDA and state agencies' loan programs would be included in the points and fees definition. The VA funding fee, for example, can be as much as 3.3%. Considering these types of fees under the mortgage insurance premium umbrella would cause all VA loans to be disqualified as well.

Lastly, it should be noted that certain mortgage insurance, such as in the case of Rural Development loans, is not refundable. Rates are higher for refundable mortgage insurance, therefore creating another disadvantage for the consumer.

With the above considerations, we believe that excluding mortgage insurance in excess of the FHA provision from the points and fees calculation in relationship to QM will be more advantageous for the consumer and limit the aforementioned concerns.

Compensation:

With the onset of national licensing requirements put in place by the SAFE Act and the recent acute government restrictions on loan originator ("LO") compensation, we do not believe that further government constraints in regards to LO compensation are necessary. Consumers are protected through clear disclosure

of LO compensation, as well as restrictions on the impetuous increase of said compensation as provided for by federal regulations, such as those related to the Good Faith Estimate disclosure requirements.

Prepayment Penalty:

The Proposed Rule requests comment on the proposed incorporation of prepayment penalty provisions into the definition of "points and fees". We request that the definition of prepayment penalty be clearly defined to exclude "interest" charged for a period after prepayment as well as the charging of general customary fees upon payment and/or prepayment of said loans. This would avoid particular covered transactions, such as FHA loan refinances, from being negatively impacted as a result of its inclusion in the points and fees calculation.

Bona Fide Third Party Charges:

The Proposed Rule requests comment on the proposal "not to exclude" from the points and fees calculation fees paid to creditor-affiliated settlement services providers. The Proposed Rule invites commenters favoring this exclusion to explain why excluding these fees from the points and fees calculation would be consistent with the purposes of the Dodd-Frank Act.

As an affiliate to DR Horton and to DHI Title, DHIM believes that we are in a uniquely appropriate position to comment on this subject. It would appear that the inclusion of bona fide third party charges paid to an affiliate within the points and fees calculation is an attempt to restrict affiliated entities from offering the many benefits they can provide to consumers. We believe that this would unduly penalize such companies and provide added expense for consumers.

The value of affiliated relationships has been touted in many arenas, which is why the support for such relationships has been so strong. Moreover, there have never been reliable statistics shown which imply the consumer is negatively impacted when working with affiliated entities. Conversely, during the government's critical review and updated enhancements to RESPA, restrictions on affiliated relationships were soundly rejected because affiliations provide no detriment to consumers, but rather allow for increased communication, reduced expense due to efficiencies and equal protection through continual compliance with government regulations for which all entities need to abide.

These realized efficiencies result in reduced cost to consumers and higher levels of customer service, and motivate the market to be more competitive. This competition results in consumers receiving a better mortgage experience with reduced costs. If bona fide third party fees paid to an affiliate were included in the points and fees test, in most situations, loans where affiliates are involved would not achieve the level of QM. This would include cases where an affiliate was charging less than a non-affiliate. With the intention of protecting the consumer, the inclusion of affiliated fees within the points and fees test could therefore result in the unintended consequence of consumers not receiving the lower cost available.

Limits on Points and Fees for QMs

The Proposed Rule sets forth two alternative proposals for a "sliding scale" when establishing the maximum allowable percentage of points and fees for a QM. The Proposed Rule notes that if thresholds were not adjusted for smaller loans, then creditors might not be able to recover their fixed costs. DHIM agrees and supports this adjustment, however it is our concern that the threshold of $75,000 is too low for certain markets, especially if portions of mortgage insurance and affiliate retained fees are included. Excluding originations under the $75,000 level, 45% of DHIM originations would exceed the 3% points and fees test; at the $100,000 level, that number falls to only 44%. This is primarily due to the concentration of DHIM

closings in areas where customary or promulgated title insurance rates are a considerable cost relative to the median loan amount. Because of the manner in which the Dodd-Frank Act is being interpreted, this would negatively impact DHIM and ultimately the consumer as the cost per loan would be increased due to the fact that the loan could not obtain the status of a QM. It should be noted that DHIM does not receive any premium paid to our affiliated title agency. It should be further noted that because our affiliate is a title agency, it only retains a portion of the title insurance premium, and the remaining portion of the charge is retained by an unaffiliated title insurer. In all cases, it appears that the current interpretation is problematic.

The Proposed Rule proposes different thresholds so that creditors are able to recover their fixed costs. Mortgage insurance is a fixed cost, which is not retained by the lender and is a product that the borrower purchases from a third party or government entity to obtain more favorable financing options. The largest hurdle for many first time home buyers is the ability to accumulate enough savings for a substantial down payment. Purchasing mortgage insurance allows borrowers who might not have the required down payment (20% under the proposed QRM rules), to obtain a home loan. To include mortgage insurance costs, whether it is government-sponsored or private, in the points and fees calculation would be a disadvantage to borrowers who would no longer be able to obtain a QM.

The same can be said for title insurance, which is a fixed cost not retained by the lender – even if the lender is an affiliate of the title company. Inclusion of these amounts in the points and fees test would also ultimately result in loans that are outside the parameters of a QM.

If the Proposed Rule ultimately includes certain portions of mortgage insurance as well as fees retained by affiliates of the creditor, the loan amount threshold to support a 3% tolerance should be much higher than $75,000. Our data supports that if both aforementioned fees were included in the points and fees test, $200,000 would be a more just benchmark. Any other reduced consideration could likely result in an increase of rates. The costs of loans to consumers will increase because inclusion of mortgage insurance and affiliate fees will push many otherwise-eligible loans out of QM status, making them non-QM loans that expose lenders to more risk and consequently force lenders to charge more.

Additionally, consideration should be given to elevated loan thresholds of greater than 3% for high-cost areas, where customary or promulgated title insurance fees can have a disparate impact on lower loan amounts. For instance, in Florida, Texas, Arizona, Oklahoma, Louisiana, New Mexico, and Alabama we see average loan amounts of approximately $150,000, and in each of these states over 50% of our originations would not meet the 3% test as currently proposed.

Underwriting of the Loan

The Proposed Rule also solicits comments regarding certain aspects of the underwriting of the loan. While DHIM agrees and currently complies with most aspects of the Proposed Rule's provisions, we would like to take this opportunity to offer our comments.

The Proposed Rule solicits comments on the requirement to underwrite the loan using the maximum interest rate that can apply during the first five years of the loan. The Proposed Rule further explains why the definition of the first five years includes "after consummation" rather than "after the first regularly scheduled payment", as it is defined in the Interim Final Rule regarding the Payment and Summary disclosures. DHIM understands the proposal to include "consummation", but asks that this be reconsidered. Given the recent lack of clarity with the Interim Final Rule regarding the Payment and Summary disclosures and the clarification that came later, we respectfully suggest that the Proposed Rule should maintain consistent definitions within the same regulation.

The Proposed Rule solicits comments on whether there are any products that permit different margins to take effect at different points throughout the loan term, or whether there are products with interest rates that are

based on a specific index at consummation, but based on a different index for subsequent rate adjustments. DHIM is not aware of any products that contain either feature.

The Proposed Rule solicits comments on alternative calculations of "Total Loan Amount" based on "Principal Loan Amount". DHIM finds this portion of the regulation and staff commentary to be unclear and requests additional guidance prior to determining our position.

The Proposed Rule solicits comments on whether simultaneous loans should be considered in the underwriting of the loan. DHIM believes that all debt should be included in the consideration.

The Proposed Rule solicits comments as to whether or not AUSs and provisions for quantitative standards should be incorporated into the definition of the QM. DHIM believes that the addition of AUSs would add value; however, we do not believe that quantitative standards should be applicable.

General Ability to Repay Standards

The Proposed Rule solicits comments on documentation relied upon to underwrite the loan. DHIM believes that:

- The Leave and Earnings Statement is concrete evidence of employment status and income for military personnel.
- HELOCs should be included in the definition of a simultaneous loan.
- The inclusion of the referenced items in the definition of mortgage related obligations is accurate, and we do not believe that there will be difficulty determining how these will impact the borrower based on pre-closing estimations.
- Debts that are almost paid off should be left to underwriter discretion. Based on the variety of variables, it would be difficult to legislate specifics. Different agencies and investors also have guidelines for required documentation for debts that are almost paid off which are referred to by DHIM, and in general all mortgage lenders. This should also not be legislatated. Adverse impact on ability to obtain credit if across-the-board limits and rules are set in law.
- Debt for all applicants should be included in the underwriting of the loan regardless of occupancy or whether credit is being applied for on an individual or joint basis.
- Current guidelines regarding forbearance or deferral should be followed.
- Widely accepted governmental and non-governmental underwriting standards should continue to define credit history standards and verification methods.
- Third party verification of records is necessary for proper assessment of reasonable ability to repay. Borrower prepared documents that are not reviewed appropriately by a third party are unacceptable.
- The 1% variance is the appropriate tolerance threshold to meet the "substantially equal" condition, as discussed in proposed comment 43(c)(5)(i)-4.
- It is reasonable and appropriate that the creditor may calculate the monthly payment using the fully indexed rate based on the outstanding principal balance rather than loan amount at consummation.
- It is a reasonable and favorable suggestion to make available a safe harbor if the largest scheduled payment possible is utilized to calculate reasonable ability to repay.
- Use of AUSs should afford a safe harbor provided the data has integrity and there is compliance with guidelines for compensating factors.

DHIM is acutely aware of the impact that the Dodd-Frank Act has had and will continue to have upon consumers and the financial services industry alike. We are optimistic that its goal to protect consumers from unfair practices, coupled with increasing clarity and consistency between previously unclear and contradictory regulations can be achieved. However, implementation of the Proposed Rule as it currently stands without taking into consideration the issues we have raised in this letter could result in an environment where consumers are "protected" out of the opportunity of ever achieving the American dream of homeownership. DHIM appreciates the opportunity to provide comments regarding this Proposed Rule.

Sincerely,

Mark C. Winter
EVP/Chief Financial Officer
DHI Mortgage G.P. Inc., general partner of
DHI Mortgage Company Ltd.

12357 Riata Trace Parkway, Suite C150
Austin, Texas 78727 Phone (512) 502-0545