July 22, 2011

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 2055

Re: Regulation Z; Docket No. R-147; RIN 7100-AD&%

Dear Sir or Madam:

Thank you for the opportunity to comment on the Federal Reserve Board's ("Board") proposed rule to implement the Ability to Repay standards of the Dodd-Frank Wall Street Reform Act and the concomitant "safe harbor"/presumption for "Qualified Mortgages" ("QMs").

We respectfully submit these comments on behalf of PulteGroup, Inc. ("PulteGroup"), which has a wholly-owned lending subsidiary, Pulte Mortgage LLC ("Pulte Mortgage") and several affiliate title and title insurance entities.[1]

I. Background.

PulteGroup is the nation's largest and most geographically diverse homebuilder, selling homes under the Pulte, Centex and Del Webb brands, with operations in 29 states, plus the District of Columbia. During its more than 60-year history, PulteGroup has delivered about 500,000 homes to a wide range of homebuyers, including first-time, move up and

[1] Richard J. Dugas, Jr., has served as President and Chief Executive Officer of PulteGroup, Inc. since July 2003, and as Chairman since August 2009. Dugas has more than 17 years of homebuilding industry experience, having served Pulte Homes in regional and market leadership positions ranging from Process Improvement Vice President in the Company's Atlanta operations to Atlanta Division president to Coastal Region President responsible for the Company's expansive southeast operations. Prior to his appointment as CEO, Dugas was Executive Vice President and Chief Operating Officer of the Company.

Since 2004, Debra W. Still has held the position of President and Chief Executive Officer of Pulte Mortgage LLC where she oversees the mortgage and title operations. She has 35 years of experience in the residential mortgage industry, the last 28 of which have been with Pulte Mortgage. She has been a member of the Fannie Mae and Freddie Mac National Advisory Councils. She was the 2010 Chair of the Mortgage Bankers Association's (MBA) Residential Board of Governors (RESBOG), and currently serves as Vice Chairman of the Mortgage Bankers Association, and is a member of the Board of Directors.

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active adult buyers. In fact, under its Del Webb brand, PulteGroup is the largest builder of active adult communities for people 55 and older.

PulteGroup is well-known throughout the industry, not just for its size and history, but also for its commitment to customer satisfaction in its building, lending and title services businesses. Since 2000, PulteGroup's operations have earned more top-three finishes than any other homebuilder in the annual J.D. Power and Associates New Homebuilder Customer Satisfaction Study. PulteGroup employs nearly 4,000 individuals in its homebuilding, mortgage lending and title services operations.

PulteGroup has relied on the existing regulatory framework to build a robust and customer-friendly family of affiliated settlement service providers – the "one-stop shopping experience" that customers appreciate.[2] Pulte Mortgage and PulteGroup's title services operations, PGP Title and Premier Land Title Insurance Company ("Premier"), employ nearly 600 individuals throughout the United States and, since 1972, have helped more than 300,000 homebuyers finance and close on their new home purchases. PGP Title, which is PulteGroup's affiliate title company, conducts closing and/or escrow title services in 18 states. Premier writes title insurance policies in 11 states.

II. Summary

By singling out affiliated title-services fees for special treatment under the proposed QM definition, the ability-to-repay rule is inconsistent with the purpose of Dodd-Frank, would hurt consumers and would inflict yet another wound on the weak residential real estate market. Specifically, the proposed QM definition includes affiliate title fees in the three percent "points and fees" threshold test for a "Qualified Mortgage," whereas fees of non-affiliate title providers are not included. The QM definition discriminates against these affiliate title and mortgage companies, who would be subject to the stricter QM test, without any rational basis, and would include them in the "points and fees" calculation even if the affiliate title providers charged the same – or even lower – fees than non-affiliate providers. In fact, in the vast majority of states title insurance rates are set and/or approved by the state insurance regulator as "filed rates" and title insurers do not have the discretion to negotiate or adjust their premiums.

The harm to consumers from the failure to exclude affiliate title services charges from the "points and fees" definition is clear. Yet, the Board suggested that it reached its decision to include these charges because Congress "appears to have rejected" the exclusion of affiliate title services charges from the "points and fees" threshold. The Board also has invited comment on why excluding such charges "would be consistent with the purposes of the statute." The Board retains the discretion under Dodd-Frank to revise the QM definition "upon a finding that such regulations are necessary and proper to ensure that responsible, affordable, mortgage credit remains available to consumers." Because the inclusion of affiliate title-services fees in the "points and fees" calculation would damage

[2] See Harris Interactive Study, "One-Stop Shopping Consumer Preferences" (February 2008), commissioned by National Association of Realtors, in which homebuyers said that using affiliates saves money and time over using separate settlement service providers.

the availability of affordable, responsible mortgage credit, PulteGroup believes that this provision should be changed.

Inevitably, such a regulation would force many enterprises with both mortgage and title operations to contemplate exiting the mortgage or title business in light of the obvious competitive disadvantage with non-affiliated mortgage and/or title companies whose title-services fees would not be included in the QM calculation. The QM definition could force affiliated enterprises to make tough choices as to which businesses to keep – mortgage or title -- reducing competition for consumer businesses, destroying efficiencies among affiliate providers and raising costs for consumers.

The predictable result of the proposed rule thus would be reduced competition, decreased lending options and increased costs A greater concentration of the mortgage business would migrate to massive "too big to fail" banks. Title services businesses would further concentrate among the handful of nationwide title insurers and their affiliate closing companies. By reducing competition, the QM definition inevitably would hurt consumers, raise homebuyer, financing and closing costs and reduce homebuyers' choices for mortgage and title services.

PulteGroup therefore asks the Board to revise the proposed QM definition such that it treats affiliate title fees in exactly the same manner as the fees of non-affiliate title companies and title insurers, by excluding affiliate title fees from the "points and fees" definition.

III. Affiliated Settlement Service Providers Create Value and Benefit Consumers

PulteGroup, like most other large homebuilders, has made substantial investments to open and operate its affiliated lender and title businesses. Nearly all of these financial services providers' customers come via referrals from PulteGroup.[3]

Use of PulteGroup's financial services providers is never required, but is a choice available to the consumer. Its financial services companies have thrived in this environment because fiscally-responsible management has directed it to build an efficient infrastructure that specializes in the unique requirements of new-construction.

PulteGroup gains distinct value from its affiliated service providers, beyond any profits it derives through ownership, and is then able to pass the benefit of this value on to consumers. Among the most important of these is the homebuilder's ability, by coordinating most of its transactions through its affiliates, to obtain reliable descriptions of its customers' financial condition and thereby to manage the ongoing integrity of its

[3] PulteGroup's financial services business model is premised on Congress' express guidance in RESPA § 8(c) that referrals to settlement service providers are lawful, subject to the limitations contained in the statute. In accordance with the past 18 years of regulation by HUD under RESPA, PulteGroup frequently offers bona fide discounts or incentives to prospective homebuyers who choose to use Pulte Mortgage to finance their home purchase.

backlog of sold (but not yet closed) homes. Similarly, the affiliate relationship allows PulteGroup to respond effectively to the unique challenges posed by new construction lending and closing; and, through better insights into the ability of its customers to obtain financing, allows PulteGroup to avoid speculative building.

Moreover, purchases financed through Pulte Mortgage and closed through PGP Title close on time more frequently than outside deals, which yields substantial economic savings to PulteGroup. New construction financing can involve lengthy timeframes and numerous changes to price. Closing dates frequently move several times, in accordance with the construction schedule, even at the eleventh hour. Yet, timely closings are crucial to PulteGroup because of the increased carrying costs associated with holding a completed home. Thus, PulteGroup's financial services providers place significance on ensuring that a buyer's financing and closing is ready the moment that the home is complete. Through their expertise in new-construction financing and close relationship with PulteGroup, Pulte Mortgage and PGP Title respond far more efficiently to these challenges than non-affiliate lenders and title companies. PulteGroup's affiliated title companies carry out a commitment to on-time closings, even when this means working late at night or over a weekend.

PulteGroup also values its affiliated mortgage and title providers' shared commitment to delighting customers with exceptionally positive experiences. This is the result of an enterprise-wide emphasis on customer service. In fact, industry research shows that consumer satisfaction is highest among buyers who finance their purchases through builder owned mortgage companies, compared to other financing sources.[4] The report, by J.D. Power and Associates, states that "the vast majority of new-home buyers take advantage of mortgage origination services where offered by their home builder, due to competitive rates, and easier and more seamless processes." In PulteGroup's view, higher customer satisfaction equates to more sales, through customer referrals and repeat business.

Affiliate providers' commitment to efficiency, reliability, timely closings and customer service is even more important to consumers, in light of the acute financial condition of the residential real estate and mortgage market. Residential markets are fragile and stressed, more so today than at any time since the Great Depression. Yet homebuilders, who are near the center of the financial storm, have – through their affiliate providers – served as a "safe harbor" for many consumers seeking secure, reliable and competitive financing of their home purchases.

Pulte Mortgage frequently has stepped in at the last moment when outside lenders, stressed by the current economic crisis or other events, have backed out of loan transactions before closing. Because of the familiarity among Pulte Mortgage, PGP Title

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[4]In a survey of overall builder satisfaction scores by J.D. Power and Associates, buyers using affiliated lenders ranked higher than those using direct lenders (such as banks, credit unions), on line lenders and unaffiliated mortgage companies. See 2007 New Home Builder Customer Satisfaction Survey, J.D. Power and Associates September 2007). This report was based on a survey of 50,399 buyers of newly built single-family homes who provided feedback after living in their homes an average of four to 18 months.

and PulteGroup, and the track record of success, PulteGroup's settlement service providers can serve PulteGroup's customers in these "rush" transactions and still close on time. Had Pulte Mortgage not been able to step in, the consumers likely would have been forced to cancel their purchase transactions, placing earnest money deposits in jeopardy and resulting in lost sales by PulteGroup.

IV. The Inclusion of Affiliate Title Fees in the QM "Points and Fees" Definition Would Raise Consumers' Lending Costs and Reduce Consumer Choice.

Economic studies have in fact shown that affiliate businesses in the title context are cost-competitive.[5] Indeed, the Department of Housing and Urban Development (HUD) has, in the past, concluded that there are meaningful consumer benefits from affiliated businesses. In the HUD Economic Analysis that was part of its June 7, 1996 final RESPA regulation governing affiliated businesses, HUD stated, " In the long run, any cost savings should be passed on to consumers in most cases. Consumers may benefit additionally from reduced shopping time and hassles." These findings are consistent with the J.D. Power and Associates survey of 50,399 consumers noted above, which found that the vast majority of new home buyers used affiliated lenders when available "due to the competitive rates, and easier and more seamless processes."

These consumer benefits would be undermined by the proposed regulation. The "points and fees" definition would put lenders with affiliate title operations at risk for violating the three-percent QM threshold on a significant portion of their residential mortgage transactions. The regulation would, almost inevitably, destroy much of the value of the affiliated providers and potentially drive either the mortgage or the title services providers out of the enterprises. The regulation also would increase homebuilders' and affiliate providers' costs and damage many of the efficiencies derived from the affiliated enterprises.

This would reduce choice for consumers and directly impact the availability and pricing of residential mortgage financing. In the end, consumers more often would have to seek mortgage and/or title services from the large banks and title enterprises. The savings and customer conveniences that the homebuilder and affiliate enterprises could share with the consumers would diminish.

While the evidence of damage to mortgage availability is relatively clear, there is no countervailing record that the inclusion of affiliate title services charges in the "points fees" definition would benefit consumers in any manner. As the Board noted, it included affiliate title charges in the definition because of an "apparent" conclusion from

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[5] *Affiliated Business Arrangements and Their Effects on Residential Real Estate*, CapAnalysis Group, Inc. (2006) (concluding that title premiums and closing costs are not higher when affiliated businesses are used); *Economic Analysis of Restrictions on Diversified Real Estate Services Providers*, Lexecon, Inc. (1995) (title and related charges are competitive with unaffiliated companies charges).

Congress. Congress, however, recognized the Board's superior position to craft a more refined and effective QM definition by empowering it to make changes that ensure a robust and affordable mortgage financing. In light of this mandate, the Board can best serve Congress' intent by revising the "points and fees" definition to exclude the affiliate title services charges and thereby encourage a diverse, affordable and safe mortgage market.

V. Conclusion

On behalf of PulteGroup, Inc., its affiliate lender, Pulte Mortgage LLC, and its several title and title insurance companies, we appreciate this opportunity to comment on the Board's proposed Regulation Z "Ability to Repay" regulation and the "Qualified Mortgage" definition. As always, we stand ready to work with the Board in its efforts to improve the efficiency and fairness of the real estate, mortgage and title marketplace.

Respectfully,

Richard J. Dugas
Chairman, President and Chief Executive Officer
PulteGroup, Inc.

Debra W. Still
President and Chief Executive Officer
Pulte Mortgage LLC