

National Association of Home Builders

NAHB Regulatory Affairs

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December 27, 2010

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: 12 CFR Part 226
Regulation Z; Docket No. R-1394
RIN AD-7100-56
Truth In Lending
Interim Final Rule; Request for Public Comment

Dear Ms. Johnson:

On behalf of the National Association of Home Builders (NAHB), I appreciate the opportunity to submit comments on the interim final rule (Rule) issued by the Board of Governors of the Federal Reserve System (Board) on October 28, 2010. NAHB is a Washington-based trade association representing more than 175,000 member firms involved in a wide variety of businesses related to housing and home building.

Background

The *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act), signed into law on July 21, 2010, amended the Truth in Lending Act (TILA) by adding Section 129E, which establishes new requirements for appraisal independence for consumer credit transactions secured by the consumer's principal dwelling. Dodd-Frank directed the Fed to issue interim final regulations to implement the appraisal independence requirements within 90 days of enactment. The Rule is effective as of December 27, 2010; however compliance is voluntary until April 1, 2011.

As provided in Dodd-Frank, issuance of the Rule replaces the Home Valuation Code of Conduct (HVCC), which was announced in December 2008 for mortgages purchased by Fannie Mae and Freddie Mac. The interim final rule incorporates key principles from the HVCC, but also attempts to clarify several areas of the HVCC that caused confusion and unintended consequences.

The Rule applies to a person who extends credit or provides services in connection with a consumer credit transaction secured by a consumer's principal dwelling. Thus, the Rule applies to creditors, appraisal management companies,

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appraisers, mortgage brokers, realtors, title insurers and other firms that provide settlement services.

The Rule addresses the following appraisal independence provisions in the Dodd-Frank Act:

- Prohibit coercion, bribery and other similar actions designed to cause an appraiser to base the appraised value of the property on factors other than the appraiser's independent judgment;
- Prohibit appraisers and appraisal management companies from having a financial or other interest in the property or the credit transaction;
- Prohibit a creditor from extending credit if it knows, before consummation, of a violation of the prohibition on coercion or of a conflict of interest;
- Mandate that the parties involved in the transaction report appraiser misconduct to state appraiser licensing authorities;
- Mandate the payment of reasonable and customary compensation to a "fee appraiser" (e.g., an appraiser who is not the salaried employee of the creditor or the appraisal management company hired by the creditor); and
- Provide that when the Fed promulgates the interim final rule, the Home Valuation Code of Conduct, the current standard for appraisal independence for loans purchased by Fannie Mae and Freddie Mac, will have no further force or effect.

NAHB Comments

NAHB commends the Board for melding the appraisal independence provisions in the Act into a workable regulation, particularly given the short statutory timeframe. We also thank the Board for seeking input from NAHB and other industry groups prior to issuance of the rule. Further, we appreciate the participation of Board staff in NAHB's Third Residential Appraisal Summit held on December 9, which included some discussion of the Rule. We believe this dialogue contributed to the practical final product and encourage the Board to continue these discussions during implementation of the Rule.

Appraisals are the foundation of our nation's collateral-based housing finance system. NAHB strongly supports appraisal independence and the anti-coercion provisions of the Dodd-Frank Act. We have all suffered through the consequences of improper valuations. NAHB supported the principles of the HVCC and we support the Board's Rule that incorporates these principles.

However, we are concerned that implementation of the Rule not result in the confusion and unintended consequences that arose from the implementation of the HVCC. A major problem for builders was confusion over what degree of communication is allowed between home sellers/lenders and the appraiser. Fannie Mae and Freddie Mac, along with their regulator, the Federal Housing Finance Agency (FHFA), attempted to address this and other issues through publication of Frequently Asked Questions (FAQ) documents on the HVCC. The FAQs clarified that it is appropriate for sellers and other parties to the transaction to contact the appraiser to provide relevant information.

NAHB is pleased that the Board incorporated these clarifications in the Rule under Section 224.42(c)(3), which specifies permitted actions by third parties. This section implements TILA Section 129E(c), which provides that TILA Section 129E(b) shall not be construed as prohibiting a mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, consumer, or any other person with an interest in a real estate transaction from asking an appraiser to:

1. Consider additional, appropriate property information, including information regarding additional comparable properties to make or support an appraisal;
2. Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or
3. Correct errors in the appraisal report.

The ability to provide additional information, including information about additional comparable properties, is critical for builders, particularly if the comparables being used are foreclosures and other distressed properties. Such properties simply do not reflect the value of a new home, which may have been built to new codes, may incorporate important green building features and may include new appliances and amenities that do not exist in the distressed property. Many appraisers do not understand the impact of new code requirements, new green building practices and other aspects of new construction that add value to a home.

It is particularly important that home builders be allowed to provide appraisers with this information to assist in appraising new construction. A key piece of information is the sales contract. The contract provides the appraiser information on the scope of work and is the only document that provides details on the transaction. This is extremely important for appraisals of new construction since the sales contract provides information on upgrades and/or concessions. We understand that FHA requires the final sales contract be given to appraisers and that the Interagency Appraisal and Evaluation Guidelines do not prohibit lenders and other third parties from providing the final sales contract to appraisers. However, we are concerned that lenders are reluctant to share the contract due to concerns that this could be construed as appraiser coercion.

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Clarifications to Permitted Actions

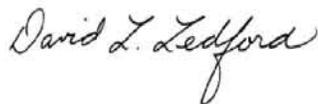
While NAHB welcomes the language in the permitted actions section of the Rule, we are concerned, based on experience from the HVCC, that this information will not get out to practitioners in the field. Despite clarifications in the HVCC FAQs, builders continue to tell us that appraisers are reluctant to speak with builders or to accept information from them specific to the property being appraised, such as the final sales contract.

To avoid this outcome with the implementation of the Rule, NAHB respectfully requests two clarifications to the permitted actions language. First, include builders in the list of third parties that may provide additional information to appraisers. Second, specify that the final sales contract is a permitted piece of additional information that may be provided to appraisers of new construction.

NAHB believes that these clarifications will help smooth implementation of the Rule and, more importantly, ensure accurate valuations of new construction. Ultimately, this will help to stabilize home prices and assist in the recovery of the housing market and the economy.

Thank you for the opportunity to provide comments on the interim final rule. If you have any comments, please feel free to contact Michelle Hamecs, Assistant Vice President, Housing Finance, at 202.266.8425 or mhamecs@nahb.org.

Sincerely,



David L. Ledford
Senior Vice President
Regulatory Affairs