



December 27, 2010

Board of Governors of the Federal  
Reserve System  
Attn: Jennifer J. Johnson, Secretary  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

Re: Regulation Z; Docket No. R-1394; RIN No. AD-7100-56

DHI Mortgage Company, Ltd. ("DHIM") appreciates the opportunity to comment on the Board's interim final rule to amend Regulation Z, which implements the Truth in Lending Act (TILA), and the staff commentary to the regulation, for the new requirements for Valuation Independence per the Dodd-Frank Wall Street Reform and Consumer Protection Act.

DHIM is a subsidiary of D.R. Horton, Inc., the largest homebuilder in America by units closed for the last eight consecutive years. DHIM employs approximately 500 people in 22 states, while D.R. Horton employs approximately 2,500 employees across the country. 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. D.R. Horton and DHIM consumers are primarily first time and first time move-up homebuyers.

DHIM generally supports the interim final rule as written but would like to respond to the Board's solicitation for comments on specific areas regarding covered persons, falsification and alteration, provisions for creditors with asset sizes of more than \$250 million, settlement service providers, volume based discounts and most importantly customary and reasonable compensation to appraisers. These points are addressed in more detail in the following set of comments.

**Covered Persons § 226.42(b)(1):**

The Board solicits comment on whether some settlement service providers (which include service providers defined under RESPA) should be exempt from some or all of the interim final rule's requirements.

DHIM agrees that some settlement service providers may have little opportunity or incentive to coerce or influence an appraiser. However, we believe that in the event these providers are in a position to do so, they, too, should be subject to the restrictions set forth in the interim final rule. It is in the best interest of the spirit and intent of the interim final rule that the appraisal review process be free from any coercion or undue

influence from anyone involved in the transaction, regardless of the level of involvement or service provided. Therefore all settlement service providers, as defined under RESPA, should be subject to the interim final rule's requirements.

**Falsification or Alteration § 226.42(c)(2)(ii):**

The Board solicits comment on whether there are specific types of alterations to the appraisal that persons other than the appraiser may make that do not affect the value assigned to the consumer's dwelling and therefore should not be deemed material.

DHIM requests that further clarification be provided on what is considered a "significant" effect on the appraised value. Within the clarification requested, we believe it is appropriate to allow for a safe harbor which would allow lenders to continue to follow agency guidelines with regard to allowable appraised value alterations. In accordance with VA guidelines, the underwriter has the authority to increase the property value by up to 5% if justified. We request clarification on what alterations permitted by agency guidelines we will be allowed to continue to follow.

We also request that the Board address and outline specific allowable types of alterations to the appraisal that do not affect value. Further guidance will allow lenders to more effectively adhere to the interim final rule's intended requirements. It is reasonable and in the borrowers best interest that minor alterations to the appraisal which are unrelated to value (such as correcting a street name from Road to Drive) do not cause delay to the borrowers closing date.

**Settlement Service Providers § 226.42(d)(1)(i):**

The Board requests comment on the appropriateness of the conditions under which persons preparing valuations or performing valuation management functions for a transaction in addition to performing another settlement service for same transaction, or whose affiliate performs another settlement service for the same transaction, will be deemed in compliance with the prohibition on conflicts of interest.

DHIM understands this portion of the regulation to indicate that a person performing a valuation management function is not deemed to have a conflict of interest so long as the final rule's safe harbors for multiple settlement service providers are met.

However, we would like to request clarification on a different interpretation of this section. We ask that the Board address the implications for an individual who performs valuation management function for a lender who utilizes an outside entity that performs multiple settlement services. We would like to know what, if any, responsibility the lender has to ensure that the non-affiliated outside entity that performs multiple settlement services does not have a conflict of interest, or if a lender would be prevented in any instance of utilizing a settlement service that later performs another settlement service.

Specifically, we request clarification as to whether, if the central appraisal department for DHIM chose to order an appraisal service from an AMC and later the loan was designated to the investor who is an affiliate of the AMC, would there be any implications for DHIM to ensure that the AMC and its affiliate were in compliance? Additionally, would the lender have any repercussions for any possible conflict of interest on the part of the AMC or their affiliate? We do not believe that companies, such as DHIM, should be held accountable for ensuring that outside entities are in compliance should multiple settlement services be utilized from such entities.

DHIM requests further clarification on the implications of multiple settlement services providers and those who utilize their services.

**Creditors with Assets of More Than \$250 Million § 226.42(d)(2):**

The Board requests comment on whether the \$250 million asset size threshold, some other asset size threshold, or other factors are appropriate for applying the different safe harbor conditions to different types of institutions.

DHIM considers the \$250 million asset size threshold an appropriate level to distinguish between large and small institutions. However we request additional clarification regarding the definition of “valuation management function” as it relates to institutions that do not employ in-house or staff appraisers. Certain companies, such as DHIM, have adopted procedures that include a centralized appraisal department (CAD). CAD performs functions such as management of approved appraiser lists, appraisal ordering and receipt and distribution of completed appraisals to be underwritten. However, CAD employees do not perform a review of the appraisal report or perform any other function of appraisal or appraiser management. This department was created to eliminate loan production staff from prohibited interaction with, and selection of, fee appraisers. DHIM requests further clarification of the definition of valuation management function and if this definition would include departments such as CAD and its members when only outside independent fee appraisers are utilized.

The safe harbor provisions as written can be interpreted to apply only to institutions where a conflict of interest might be present with regard to in-house staff appraisers and affiliates that perform valuation management functions. As the definition of valuation management function is written, it is unclear how the regulations and safe harbor conditions would apply to companies such as DHIM who do not employ staff appraisers.

If it is determined that the valuation management function would apply to internal departments such as CAD, we request further clarification regarding the safe harbor as it pertains to institutions that do not employ staff appraisers and do not have affiliates that employ staff appraisers. If it is determined that the valuation management function would not apply to internal departments such as CAD, we request the same clarification regarding the safe harbor as it applies to DHIM.

The Board also requests comment on the appropriateness of the three conditions (for the safe harbor for those that prepare valuations or related management functions) required under 226.42(d)(2) for inclusion in the final rule.

DHIM believes that the three conditions outlined are appropriate firewalls to ensure appraiser independence is observed, however further clarification of the valuation management function is requested, as outlined above, as it pertains to entities that do not employ staff or in-house appraisers.

**Requirement to Provide Customary and Reasonable Compensation to Fee Appraisers § 226.42(f)(1):**

The Board requests comment on whether the final rule should define “agent” to exclude fee appraisers or any other parties.

DHIM agrees that fee appraisers and companies that employ fee appraisers should not be included in the definition of agent as it pertains to the requirement to pay reasonable and customary fees to lenders and agents of the lender. Fee appraisers that employ other fee appraisers should be able to set and manage the

compensation models for their employees independent of standards set forth in the final rule, as those compensation models may include hourly wages and employment benefits. To require that these employers pay their employees fees on the same scale as independent appraisers could be financially burdensome thus reducing their ability to compete.

**Failure to Perform Contractual Obligations § 226.42(f):**

The Board requests comment on whether the Board should specify particular types of contractual obligations that, if breached, would warrant withholding compensation without violating 226.42(f).

DHIM asks the board to specify particular types of violations of contractual obligations that warrant withholding compensation. We also request that the Board, while providing examples of specific failures, also indicate that the items listed are not exhaustive.

**Volume Based Discounts § 226.42(f)(1):**

The Board requests comment on whether further guidance is needed concerning the permissibility of volume-based discounts under 226.42(f)(1).

DHIM requests that the Board provide further guidance and suggests that the final rule mirror regulations outlined under RESPA. Under RESPA, volume based discounts are allowable relative to settlement service providers as long as the associated savings are passed on to the borrower. We ask that the Board expand on the permissibility of volume based discounts and include any additional restrictions that would be imposed by the interim final rule above current regulations.

**Compensation Must Be Reasonably Related to Recent Rates § 226.42(f)(2)(i):**

The Board requests comment on whether additional guidance regarding how creditors may identify recent rates is needed, and solicits views on what guidance in particular may be helpful.

The first of the two methods outlined to achieve the presumption of compliance indicate that recent rates paid should be evaluated with individual appraiser and property criteria. DHIM conducted similar research with the implementation of the RESPA final rule and set fees accordingly; however, the fee study was not on an individual appraiser and property level. We request further clarification with regard to how to accomplish such a fee study on such a specific level and how to ensure that the fees would be deemed reasonable.

Also, if the fee is to be determined on a loan by loan basis, considering individual appraiser and property criteria, it could be difficult to comply with this requirement and with RESPA's requirement regarding disclosure of fees at the time of loan application because the specific criteria are often unknown at that time.

We ask that the Board clarify what measures a creditor should take to ensure compliance with the requirement, and what entity will be identified to confirm that the fees are customary and reasonable.

**Fee Appraiser Qualifications § 226.42(f)(2)(i)(D):**

The Board requests comment on whether the final rule should expressly prohibit basing an appraiser's compensation on an appraiser's membership or lack of membership in particular appraisal organization.

DHIM requests further clarification on how compensation would be allocated based on an appraiser's affiliation or membership with a particular organization. A creditor might have limited recognition of the difference between different organizations or the difference between designations.

DHIM believes that the Board should prohibit basing an appraiser's compensation on such criteria given the lack of information available regarding certain designations or organizational membership on which to base compensation.

**Compensation § 226.42(f)(2)(i)(A)-(F):**

The Board solicits comment on whether the factors in 226.42(f)(2)(i)(A)-(F) (type of property, scope of work, timeline required, appraiser experience and quality, etc.) are appropriate, and whether other factors should be included.

DHIM agrees that the factors such as type of property, scope of work and timeline are appropriate. However, the complexity of all of the possible combinations of variables could make it problematic in attempting to create a standard customary and reasonable fee schedule to address all factors, and to apply them on a loan by loan basis. We ask for guidance on a method to determine fees based on individual property and appraiser criteria at the time of initial disclosure of fees to the borrower. Currently, fees paid to appraisers are typically standardized based on loan type, general property and geographic characteristics and are accurately disclosed to borrowers based on generally accepted fees in the marketplace. In the instance that individual appraiser criteria must be evaluated to determine compensation, fees disclosed initially might be under-disclosed. This poses a RESPA issue as disclosure happens at the time of loan application and an appraiser is chosen at a later stage of the process. DHIM asks for guidance on how to disclose accurate fees at loan application without identifying individual appraisers and their criteria until later in the loan process.

Also, should an appraiser not be willing to accept a fee that is determined by DHIM to be customary and reasonable based on the individual appraiser and property criteria, we ask for guidance on the acceptability of removing the appraiser from the approved appraiser list.

**Rates Based on Objective Third-Party Information § 226.42(f)(3):**

The Board requests comment on whether studies and surveys should be treated differently for the purposes of this interim final rule. Additionally, the Board solicits comment on whether and on what basis the final rule would give creditors or their agents a safe harbor for relying on a fee study or similar source compiled appraisal fee information. The Board also requests comment on what additional guidance may be needed regarding third-party rate information on which a creditor and its agents may appropriately rely to qualify for the presumption of compliance.

DHIM does not distinguish between studies and surveys. With respect to rates "based on objective third-party information," DHIM believes that the creditor should be deemed capable of gathering information with regard to customary and reasonable rates for a geographic location so long as the creditor is able to provide the substantiated information upon request. The creditor should be held responsible for appropriate compliance measures to comply with the interim final rule.

In addition, DHIM requests clarification and guidance on what third parties would be deemed acceptable to provide this information. We ask that the Board make known to creditors what fee schedules, studies and surveys and the information derived from them would be acceptable. We also ask that the Board consider fee studies and surveys conducted by creditors, which are not AMC's, to be an acceptable means of

determining and maintaining reasonable and customary fee schedules for appraisers on their approved appraiser lists.

**Appraisal Management Company § 226.42(f)(4)(iii):**

The Board requests comment on whether the interim final rule's definition of "Appraisal Management Company" is appropriate for the final rule.

DHIM requests clarification of the Appraisal Management Company definition and on whether the definition is only applicable to an external third party authorized by the lender. Some companies, such as DHIM, have internal departments that perform many of the functions in the definition, however they are a department housed within the company and not a separate income driven entity.

**Mandatory Reporting § 226.42(g)(1):**

The Board solicits comment on whether reporting should be required only if a material failure to comply causes the value assigned to the consumer's principal dwelling to differ from the value that would have been assigned had the material failure to comply not occurred by more than a certain tolerance, for example by 10 percent or more.

To ensure compliance with USPAP rules and regulations a lender could possibly conclude that there would be a need to hire a staff appraiser to ensure knowledge of violations if and when they occur. While some violations might be obvious, a creditor might not have intricate knowledge of all USPAP rules and regulations. DHIM requests further clarification on what would be considered a material failure to comply, and on how creditors could be assured that they could identify a material failure to comply that would cause the value assigned to the consumer's dwelling to differ from the value that would have been assigned in the absence of the material failure.

**Timing of Reporting § 226.42(g)(2):**

The Board requests comment on what constitutes a reasonable period of time within which to report a material failure to comply.

DHIM proposes that a time period of 60 days from the end of an internal investigation by a lender, which is consistent with FNMA, FHLMC and Agency guidelines, would be an appropriate and reasonable period of time within which to report a material failure to comply.

**Effect of the Interim Final Rule on Small Entities:**

The Board also invites comments on the effect of the interim final rule on small entities.

While DHIM does not have comments regarding the effect on small entities, we would like to request that the Board ensure that the provisions set forth for small entities not present an unfair advantage to such entities.

DHIM appreciates the opportunity to provide comments, pose questions and request clarification regarding the interim final rule.

Sincerely,

Craig Pizer

A handwritten signature in black ink, appearing to read "Craig Pizer", written over the printed name.