July 21, 2011

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

Re: Docket No. R-1417
RIN No. 7100-AD75
Title: Regulation Z; Truth in Lending Proposed Rule; Request for Public Comment

This letter contains the comments of Universal American Mortgage Company ("UAMC"), a national mortgage lender, regarding the above-referenced Notice of Proposed Rulemaking ("NPR") of the Board of Governors of the Federal Reserve System ("FRB") to amend Regulation Z, the regulation promulgated by the FRB under the Truth in Lending Act. The NPR proposes regulations to implement the ability to repay requirements set forth in sections 1411, 1412 and 1414 of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010 ("Dodd-Frank"). The FRB requested comments to the NPR by July 22, 2011. As of July 21, 2011, the Consumer Financial Protection Bureau ("CFPB") will assume finalization duties with respect to the NPR; consequently, UAMC addresses its comments in this letter to the CFPB. UAMC is a subsidiary of Lennar Corporation ("Lennar"), a national homebuilder, and has several settlement service affiliates which include Eagle Home Mortgage, LLC ("Eagle") and North American Title Group, Inc. ("NAT"). Consequently, UAMC is in a unique position to comment on the effects that the proposed rulemaking on ability to repay would have on consumers in the mortgage market. UAMC has consistently applied independent and rigorous underwriting standards that conform to Federal agency and investor requirements as part of their lending practices, and applaud the CFPB's efforts to apply such standards across the industry. UAMC provides more specific comments below.

I. Overview of UAMC

UAMC provides mortgage loan origination services and, through its affiliates, title agency services to consumers. UAMC entered into affiliate arrangements with NAT and others because of the benefits that having such affiliates would bring to UAMC's customers. Specifically, UAMC knew that its consumers would greatly benefit from the use of affiliated settlement service providers that would provide efficient, "one-stop-shopping" for consumers, thereby lowering consumer costs and providing consumers with more effective customer service.

To encourage consumers to use these service providers for their settlement service needs, UAMC and its affiliates frequently offer discounts and other incentives. Such incentives in the past have included builder upgrades, closing cost credits, and discount points. UAMC and its affiliates are able to offer such incentives to its consumers because of the cost savings and economies of scale realized through the affiliate relationship. Moreover, UAMC benefits from the certainty of knowing that its consumers will experience superior customer service and that the closing will occur on time. Consumers benefit through the incentives and the satisfaction of one-stop shopping. Should the CFPB proceed with rulemaking, it should not offer any proposal that limits consumer choice in mortgage lending products or inhibits the ability of lenders, such as UAMC, to offer *bona fide* incentives to their consumers if they decide to use an affiliated title or other settlement service provider.

II. Future Preeminence of Qualified Mortgages

The NPR proposes regulations to enact the ability to repay portions of Dodd-Frank, as discussed above. Based on the apparent belief that lenders frequently provided mortgage loans to unqualified borrowers, the NPR mandates that for each residential mortgage loan (excluding HELOCs and certain other types of loans) the lender must make a reasonable and good faith determination (at or prior to consummation) that the borrower has a reasonable ability to repay the loan. The NPR lists a variety of underwriting factors that lenders must consider in making this determination. Under the NPR, failure to make this determination in the proper fashion subjects the lender to TILA remedies, including being liable for so-called HOEPA damages (i.e., damages equal to the sum of all finance charges and fees paid by the borrower), and provides the borrower with a defense to foreclosure by recoupment or set-off.

As an alternative to making this determination, the NPR proposes that lenders can meet the ability to repay requirement by making qualified mortgages ("QMs"), which are mortgages with certain features that are apparently designed to ensure that the mortgages will be at less risk of default. Under the proposed regulations, QMs provide either a safe harbor from the ability to repay determination, or provide lenders with a rebuttable presumption of compliance with the determination requirements (discussed further below).

UAMC urges the CFPB to consider that if the proposed regulations are adopted in their current form, loans written using the ability to repay determination ("non-QM loans") will by necessity be more expensive for borrowers than QM loans. There is a greater risk associated with non-QM loans for lenders and investors; the ability to repay determination is very fact-specific and unique to each borrower, which creates uncertainty in the application of the determination and potentially subjects the lender to higher damages, as discussed above. This greater risk will make non-QM loans more difficult to sell on the secondary market, forcing non-QM loans to become more expensive for consumers. Consequently, lenders will seek to make QM loans whenever possible, and most borrowers will prefer QM loans if they can qualify for them, due to the increased cost or general unavailability of non-QM loans. This, in turn, makes certain aspects of the proposed QM definition very important.

III. QMs – Safe Harbor vs. Rebuttable Presumption

The NPR invites comments on whether making a QM should provide a safe harbor or a rebuttable presumption from the ability to repay determination requirements. UAMC feels that QMs providing a safe harbor is the better method. The safe harbor option provides consumers with sufficient protection, since it allows them to bring suit to determine if the QM standards have been met for a specific loan. This, in turn, will help reduce the cost of QM loans for consumers, as lenders can confidently write QM loans in an environment of clear compliance criteria, focused litigation standards and some measure of protection from enhanced TILA liability. The rebuttable presumption option, on the other hand, essentially renders making QMs meaningless, since the borrower can always assert that the lender failed to consider any one of the ability to repay criteria. Lenders would have no incentive to originate QM loans, because the entire point of QM loans (i.e., some form of protection from enhanced TILA liability under the ability to repay determination requirement) would be eliminated. Consequently, all loans would become more expensive, as lenders would have to build in increased protections from the enhanced TILA liability.

For these reasons, UAMC encourages the CFPB to determine that QMs provide a safe harbor from the ability to repay determination requirements. Additionally, in order to make the safe harbor provision as effective as possible in guiding lender origination practices and streamlining litigation resolution, UAMC encourages the CFPB to mandate bright-line criteria for determining QM compliance and to provide for the use of standardized compliance tools that will permit lenders to easily and infallibly demonstrate their compliance with QM standards. The CFPB's failure to provide for clear methods of determining compliance with the QM standards would likely result in costlier litigation and increased costs for QM loans, which is contrary to consumer interests.

IV. QMs – "Points and Fees"

The proposed regulations in the NPR would require that points and fees for a QM be limited to 3% of the loan amount. For these purposes, the regulations would extend the definition of "points and fees" that is currently applicable to high-cost mortgages under Regulation Z to QMs, with some revisions. Consequently, "points and fees" for purposes of QMs would include (a) mortgage insurance premiums in excess of the amount payable under Federal Housing Administration ("FHA") provisions, and (b) all items listed in section 226.4(c)(7) of Regulation Z ("real estate-related fees"), other than amounts held for future payment of taxes, if the real estate-related fees are paid to an affiliate of the lender. These real estate-related fees consist of charges for standard settlement services, such as fees for title examination and title insurance, fees for loan document preparation, notary and credit-reporting fees, and property appraisal fees, including fees for pest-infestation or flood-hazard determinations.

With respect to mortgage insurance premiums, the proposed definition would make it difficult for loans with private mortgage insurance to qualify as QMs. If the proposed regulations are enacted, otherwise-compliant loans will likely not qualify as QMs, because it will be difficult to meet the 3% QM test if private mortgage insurance premiums in excess of FHA provisions are included in that cap. Private mortgage insurance premiums are typically larger than the amount payable under FHA provisions because private mortgage premiums are refundable to the consumer, whereas FHA premiums generally are not. The consumer, therefore, receives a substantial benefit for purchasing private mortgage insurance that is not available under the FHA provisions. The proposed regulation, as noted above, would likely lead to consumers being unable to obtain private mortgage insurance for QM loans. This could result in increased lending prices to consumers or even a movement of consumers to the FHA program, which is contrary to the Federal government's stated intention of reducing consumer reliance on FHA loans. Moreover, there does not appear to be a substantial justification for including private mortgage insurance premiums (at any level) in the points and fees calculation, while fully exempting FHA premiums, since the two kinds of insurance accomplish exactly the same goal. UAMC therefore urges the CFPB to remove private mortgage insurance premiums from the points and fees calculation, regardless of their size in relation to FHA provisions.

With respect to the inclusion of real estate-related fees paid to affiliates in the points and fees calculation, this inclusion would unfairly impact UAMC, and any company that has affiliated service providers that provide services covered by these fees, while at the same time adversely affecting consumers. As described above, UAMC's borrowers receive incentives and lower prices through the efficiencies created via affiliated relationships. The proposed definition of "points and fees," however, could mean that such mortgage loans (except in the case of particularly large loans) would fail the QM test only because of the inclusion of affiliate-charged real estate-related fees under the 3% cap. At the same time, lenders without affiliate settlement service provider relationships would offer more expensive loans that nevertheless meet the QM 3% test, resulting only in increased costs to consumers. This presents an unfavorable outcome for consumers; the provision of *bona fide* settlement services, regardless of the affiliation status of the service provider, should not disqualify loans from QM status and protections, as this would result in more expensive loans for consumers. UAMC feels, therefore, that the inclusion of any *bona fide* real estate-related fees in the definition of "points and fees" is inappropriate, regardless of whether such fees are paid to an affiliate of the lender.

Lenders often have no discretion over the price of real estate-related fees. For example, title insurance fees are usually either mandated by state law or required to be filed with the relevant state authority and do not vary. Additionally, even if the lender is affiliated with the title insurance company in question, the lender does not receive any portion of such a fee. This eliminates the apparent concern that lenders could charge consumers more for settlement services performed through affiliates.

As demonstrated above, it is unfair and counterproductive to include settlement charges paid to affiliates in the "points and fees" definition while at the same time excluding the exact same charges that are not paid to affiliates. The only result would be increased consumer costs, which is antithetical to the goals of the Dodd-Frank Act. The proposed regulations should regulate all consumer charges in the same way, regardless of whether such charges are paid to affiliates. Therefore, UAMC strongly urges the CFPB to remove real estate-related fees paid to a lender affiliate from the definition of "points and fees" for purposes of QMs. Removal of these charges from the "points and fees" definition will help standardize the regulation of lenders and assist in keeping loan prices lower for consumers, and is otherwise warranted because lenders typically have little to no discretion over the amounts of these charges, even if they are performed by affiliates.

V. Conclusions

UAMC shares the CFPB's goal of ensuring that borrowers receive meaningful protection in the mortgage lending marketplace through the requirement of rigorous ability to repay underwriting analyses and the provision of standardized, QM loans. However, should the CFPB proceed with the proposed regulations as written, particularly with respect to the inclusion of real estate-related fees paid to affiliates in the definition of "points and fees," the likely result will be increased costs and lack of choice for many borrowers, and may even prevent many otherwise-deserving borrowers from realizing the dream of owning their own homes. Therefore, UAMC strongly encourages the CFPB to carefully consider the issues raised in this letter, and to amend the proposed regulations accordingly.

UAMC appreciates the CFPB's consideration of these comments in response to the NPR.

Sincerely,

James T. Timmons
President
Universal American Mortgage Company, LLC

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