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October 15, 2012

By electronic delivery to: regs.comments@federalreserve.gov

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RE: 12 CFR Part 34 and 12 CFR Part 164, 12 CFR Part 226, 12 CFR Part 722, 112 CFR Part 1026, 12 CFR Part 1222: Truth In Lending Act (Regulation Z); Appraisals For Higher Risk Mortgage Loans; Docket Nos. OCC-2012-0013, R-1443, and CFPB-2012-0031; RIN 1557-AD62, RIN 7100-AD90, RIN 3133-AE04, RIN 3170-AA11, and RIN 2590-AA58; August 15, 2012

Ladies and Gentlemen:

This letter is being submitted on behalf of Wells Fargo & Company and its affiliates ("Wells Fargo") in response to the August 15, 2012 proposal of the Board of Governors of the Federal Reserve System, Consumer Financial Protection Bureau ("Bureau"), Federal Deposit Insurance Corporation, Federal Housing Finance Agency, National Credit Union Administration, and Office of the Comptroller of the Currency (collectively, the "Agencies") amending Regulation Z in order to implement certain amendments made to the Truth In Lending Act ("TILA") by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), related to appraisal requirements for "higher-risk mortgage loans" ("Proposal"). Wells Fargo appreciates this opportunity to provide comments, and respectfully requests that the Bureau consider adopting the suggestions made in this letter.

Wells Fargo strongly supports the objectives that underlie this proposal, and agrees with many of the proposed amendments. We do recommend, however, that the Agencies consider certain changes before publication of the final rule. In this letter we recommend revisions to the Proposal that we believe will both facilitate compliance with the appraisal requirements and enhance consumers' understanding of their rights to receive and the intended use of valuations in the credit decision.

One of the challenges faced by the Agencies and industry is determining appropriate implementation timeframes for the various upcoming rules. As the Agencies are aware, for a number of Dodd-Frank title XIV provisions – including the ones covered in this Proposal – a final rule must be published by January 21, 2013, with a maximum 12-month implementation period ("mandatory rule provisions"). Because many of the mandatory rule provisions are significant, industry-changing, and will require a great deal of creditor resources, we urge the Agencies to set an effective date for the Proposal that will provide creditors with the maximum time available. Wells Fargo therefore recommends an implementation period for the Proposal of the full 12 months, to ensure creditors are provided sufficient time to implement all of the new requirements, including appraisal disclosure.

Our comments are summarized below. Additional detail can be found in the attached Appendix Materials.

A. Higher-Risk Mortgage Appraisal Requirements

Wells Fargo supports the proposal to establish additional appraisal safeguards for certain residential mortgage loans secured by a principal dwelling. The Proposal will provide added protection to consumers and creditors by setting clear standards for appraisals on certain higher-risk transactions and by requiring an additional appraisal when there is a risk that the loan will be secured by a "flipped property". We would, however, suggest the following changes.

Eliminate the New Higher-Risk Mortgage Classification. The new TILA definition of a higher-risk mortgage is nearly identical to the existing classification of a higher-priced mortgage under Regulation Z. The close similarities between these two categories of loans will create considerable confusion among consumers and throughout the industry and could increase a creditor's compliance burden without enhancing consumer protection. We believe the Agencies should exercise their broad exemption authority under TILA to either apply TILA section 129H appraisal requirements to all principal-dwelling secured, non-qualified mortgage loans, or in the alternative, use the current higher-priced mortgage loan definition in Regulation Z in lieu of the "higher-risk mortgage" designation, but limit its application to only "non-qualified mortgage," principal dwelling secured loans that meet the HPML definition.

De Minimis Exception From the Requirement to Obtain an Additional Appraisal. Wells Fargo recommends that a creditor should not be required to obtain an additional appraisal if the loan applicant's purchase price to acquire a property does not exceed the price when the seller acquired the property by more than 5%. Neither the public interest nor the safety and soundness of the creditor will be served by requiring a creditor to obtain a second appraisal when there is not a substantive difference between the seller's original purchase price and the subsequent purchase price of the applicant.

Low Density Appraiser Market Exception. Wells Fargo recommends that the requirement to obtain an additional appraisal from a second certified or licensed appraiser not apply in low density appraiser markets. Requiring a second appraisal in such markets could have a detrimental effect on the quality and timing of the second appraisal, and thus its usefulness, as the choice of appraisers with sufficient market familiarity is severely limited. Wells Fargo therefore recommends that Agencies create an exception to the requirement to obtain a second appraisal in any state with fewer than 500 state licensed or certified appraisers, or any county with 5 or fewer state certified or licensed appraisers.

Construction Loan Exception. The requirement to obtain a written appraisal performed by a state certified or licensed appraiser who conducts a physical inspection of the interior of a property should not apply to construction loans during the construction phase of the transaction. As the Agencies recognize, it is generally not feasible to secure an appraisal on a property during the construction phase of the transaction since the structure is not typically available for a physical inspection. A written appraisal therefore is unlikely to yield sufficient information about the condition of the property to justify the expense to the consumer.

B. Disclosure Requirements

Wells Fargo supports the proposal to inform consumers about the appraisal process. We agree that a consumer should be notified that an appraisal prepared for the mortgage is for the sole use of the creditor, and that the consumer may choose to have a separate appraisal conducted at the consumer's expense. We believe, however, that consumer understanding of the appraisal process and the rights retained by a consumer could be strengthened by providing additional information through a comprehensive disclosure that addresses a consumer's rights under both TILA and the Equal Credit Opportunity Act ("ECOA").[1] We would, therefore, suggest the following changes.

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[1] Wells Fargo has also submitted a comment letter in response the Bureau's proposal to amend Regulation B to implement new ECOA appraisal requirements. 12 CFR Part 1002, Equal Credit Opportunity Act (Regulation B), Appraisal Delivery Requirements, Docket No. CFPB-2012-0032. RIN 3170-AA26. August 15, 2012. Our comment letter in response to the Bureau's proposal contains a similar recommendation.

Alignment of ECOA and TILA Disclosure Language. Wells Fargo recommends a single integrated disclosure sample describing a consumer s appraisal rights under both TILA and ECOA. One comprehensive disclosure document that contains all pertinent TILA and ECOA elements will ensure that consumers receive appropriate disclosure information, and help consumers to understand their rights throughout the property valuation process.

Specific Disclosure Language. In order to help consumers understand their rights and the role of the creditor under ECOA and TILA, Wells Fargo recommends that the integrated disclosure sample contain: (1) the statement that a creditor will provide the consumer with a copy of all written appraisals and valuations developed in connection with an application for credit; (2) a list of documents that constitute a valuation; (3) certain language that clarifies appraisals and valuations ordered by a creditor in connection with a loan application will be secured by the creditor for the creditor's sole use; (4) the creditor determines how an appraisal or valuation will be analyzed and used when rendering a credit decision; (5) the statement that a consumer may choose to have a separate appraisal conducted at consumer's expense for certain higher-risk mortgage transactions, however, the creditor shall be responsible to select, manage, and pay directly any compensation to an appraiser.

Alignment of ECOA and TILA Disclosure Delivery Requirements. Wells Fargo recommends that the Agencies use their broad exemption authority under TILA to allow a creditor to notify the consumer of the consumer's appraisal rights under TILA within three business days after the receipt of an application. The disclosure delivery timing adjustment will align the delivery obligations under TILA and ECOA and will enable a consumer to receive the appraisal disclosure in the three-day disclosure package along with other pertinent information about the credit decision and loan process. The adjustment will promote consistency in the timing of the delivery of appraisal disclosures across the industry and eliminate the administrative burden that would be incurred by a creditor from supporting separate ECOA and TILA appraisal disclosure delivery processes.

Wells Fargo thanks the Bureau for this opportunity to provide comments.

Sincerely,

Michael J. Heid
President
Wells Fargo Home Mortgage

Appendix Materials

Appendix Materials

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Appendix A – Higher-Risk Mortgage Requirements

The Proposal requires a creditor to obtain a written appraisal performed by a certified or licensed appraiser who conducts a physical interior inspection of property. The Proposal also requires a creditor to obtain an additional appraisal from a different appraiser, at the creditor's sole expense, if the applicant seeks to procure the dwelling for a price in excess of the dwelling price when it was acquired by the seller, and the seller's acquisition date was less than 180 days before the applicant's date of acquisition ("second appraisal requirement"). Wells Fargo agrees that the Proposal will be beneficial to consumers and the public by enhancing a consumer's understanding of the analysis supporting the applicable appraisals and valuations in connection with certain higher-risk loan products. However, we would ask the Agencies to consider the following changes.

Eliminate the New Higher-Risk Mortgage Loan Classification

The Proposal introduces a new mortgage classification to Regulation Z - the "higher-risk mortgage" (HRML). This definition, and its associated burdens, joins Regulation Z's "high-cost mortgage", "higher-priced mortgage" (HPML), and eventual "qualified mortgage" (QM) definitions. Wells Fargo is concerned that establishing another unique mortgage definition under Regulation Z will lead to additional costs and confusion that we believe can easily be avoided while still enhancing consumer protections. Wells Fargo recommends that the Agencies use their broad exemption authority under TILA to either: (1) apply TILA section 129H appraisal requirements to all principal-dwelling secured, non-QM loans, or (2) use the current HPML definition in Regulation Z in lieu of the "higher-risk mortgage" designation, but similarly limit it to only non-QM, principal dwelling secured loans that meet the HPML definition.

The first alternative would remove the adjusted rate mortgage threshold, allowing all consumers with a principal dwelling secured, non-QM loan to qualify for section 129H's enhanced protections. This alternative would also reduce creditor's overall compliance burden by reduced by removing the HRML definition and thresholds test. The second alternative recognizes that proposed definition of HRML is nearly identical to the existing classification of a HPML, particularly when considering the HPML jumbo escrow provision. The close similarities between the proposed definition of a HRML and the existing classification of a HPML will create considerable confusion among consumers and throughout the industry and could increase a creditor's compliance burden without enhancing consumer protection.

De Minimis Exception From the Requirement to Obtain an Additional Appraisal

Wells Fargo appreciates that the second appraisal requirement is designed to discourage "property flipping" scams that artificially inflate the price of the property over a short period of time without substantive improvements that justify the price increase. We also fully support having such a requirement in circumstances where there is a risk that the loan will be secured by "flipped property". However, we believe that a Proposal should contain a de minimis exception. Neither the public interest nor the safety and soundness of the creditor will be served by requiring a creditor to obtain a second appraisal in a situation where there isn't a substantive difference between the seller's original purchase price and the subsequent purchase price of the applicant.

Wells Fargo therefore recommends that a creditor should not be required to obtain an additional appraisal if the loan applicant's purchase price for a property does not exceed, by more than 5%, the price of the property when acquired by the seller. This threshold is sufficiently low that it is unlikely any fraudulent "flipping" arrangement would be present, and will relieve lenders of the added expense of an additional appraisal that is unlikely provide the consumer any added protection.

Low Density Appraiser Market Exception.

The second appraisal requirement will be problematic in market areas with a low density of state licensed or certified appraisers. Historically, rural markets have presented a difficult challenge to creditors seeking to procure appraisal reports from a qualified and reliable source. These challenges have grown in recent years as increased regulatory costs, higher reporting demands, heightened barriers of entry into the profession, and an aging appraiser population have contributed to a decline in the overall number of qualified appraisers. Under these circumstances, finding a second qualified appraiser in a low appraiser density markets with the requisite market knowledge to perform the appraisal assignment in a timely fashion will be extremely difficult.

Given these realities, the application of the second appraisal requirement in low appraiser density markets will have a detrimental effect on consumers. Obtaining a second appraisal in a market with a low number of qualified and readily available appraisers will delay the loan fulfillment process. It could also have a detrimental effect on appraisal quality if a creditor is required to consider the analysis of an appraiser who does not possess the requisite qualifications to meet the creditor's normal selection requirements. Wells Fargo therefore recommends that the Agencies provide an exemption from the second appraisal requirement when the property is located in a low appraiser density market, defined as any state with fewer than 500 state licensed or certified appraisers or any county with 5 or fewer certified or licensed appraisers.

Construction Loan Exception

As the Agencies have observed, an interior inspection of a property secured by a construction loan is not always feasible. Given the nature of construction loans – financing provided to complete construction of a property – Wells Fargo believes that no benefit is gained from applying the Proposal requirements to a construction loan. During the construction phase there typically will not be a structure available for a physical inspection and, in cases of partially-built structures, a formal appraisal does little to assist the appraiser in determining the actual value of the property. We believe that requiring a full appraisal for a construction loan during the construction phase of the transaction will add unnecessary consumer expense without yielding sufficient information to justify the expense. The consumer will receive the protections of the Proposal in conjunction with the permanent loan secured by property, which is finalized once construction is complete. Wells Fargo therefore urges the Agencies to remove construction loans, during the construction phase of the transaction, from the list of transactions that will be subject to the Proposal requirements.

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Appendix B– Disclosure Requirements

The Proposal requires the creditor to provide a consumer with a disclosure at application that describes the consumer's rights throughout the appraisal process. Wells Fargo believes that a new disclosure requirement will be beneficial to consumers and the public by enhancing a consumer's understanding of the analysis supporting the applicable appraisals and valuations. However, we would recommend certain changes, including a suggestion that the Agencies adopt a unified sample disclosure that be used to inform consumers of their appraisal-related rights under both TILA and ECOA.

Alignment of TILA and ECOA Disclosures

Title XIV of Dodd-Frank adopts two appraisal-related disclosure requirements. The first, amending TILA and addressed in this Proposal, applies to any application for a residential mortgage loan secured by a principal dwelling that is a higher-risk mortgage loan. This Proposal requires the delivery of the TILA disclosure at the time of application. The second, amending ECOA and addressed in the Bureau's Appraisal Requirements Proposal, applies to any application for a loan secured by a first lien on a dwelling. This Proposal requires the delivery of the TILA disclosure at the time of application, while the Appraisal Requirement Proposal requires the delivery of the ECOA disclosure within three business days of receiving an application.

Although the two delivery requirements apply to different sets of transactions, we urge the Agencies to develop a single integrated disclosure that describes the applicant's rights under both laws. We believe that one comprehensive disclosure will help to ensure that consumers receive all appropriate disclosure information in conjunction with their application. In addition, we believe that a plain language document designed to incorporate the ECOA and TILA elements into a single comprehensive disclosure will improve consumer comprehension of the appraisal and valuation process, promote consistent delivery practices across the industry, and help to ensure that consumers are fully informed of their rights at the time of application.

We believe a single disclosure would also address an issue created by the timing of the disclosure and the definition of a "higher-risk mortgage loan." If the Agencies retain the current definition of higher-risk mortgage loan, or impose higher-priced mortgage thresholds, requiring a disclosure at application would require the creditor to determine at that point in time whether the APR exceeded the APOR by an enumerated rate based on a transaction of comparable size. It is highly unlikely that a creditor will possess sufficient information about the applicant's potential interest rate at the time of application to determine whether a mortgage loan would be subject to the Proposal. Even if the Agencies would adjust the category to include all non-QM loans, it would still be difficult for creditors to make a determination at this state of the process. A single comprehensive disclosure sample that contains pertinent TILA and ECOA appraisal elements will ensure that a higher-risk mortgage applicant will always receive a description of the applicant's rights under TILA, even when the creditor isn't aware at the time of application whether the higher-risk mortgage requirements will apply.

Specific Disclosure Language

ECOA section 701, as amended by Dodd-Frank, expands the number of valuation documents that must be delivered to an applicant before a loan closing. While an applicant may be generally familiar with the concept of an appraisal report and the role that it will play in the credit decision process, many applicants are not aware that a creditor may also rely on other valuation methods to render a credit decision, and that the applicant possesses the right to receive each valuation product. Wells Fargo therefore recommends that the Bureau add the word "valuation" to the proposed sample disclosure, which will inform an applicant that they can expect to receive each appraisal and valuation developed in connection with their application. Because consumers may be unfamiliar with this term, we further recommend the sample disclosure contain a list of the documents that constitute a "valuation," namely: AVMs, BPOs, and internal review documents used by creditors to reconcile multiple values.

Wells Fargo also urges the Bureau to add certain language to the sample disclosure regarding the use of valuations and the creditor's role in the valuation process, which we believe will help reduce consumer confusion and the number of disputes that could potentially arise throughout the appraisal process. Specifically, we recommend that the sample disclosure language be revised to clarify that:

- The creditor will provide the consumer with a copy of all written appraisals and valuations developed in connection with an application for creditor;
- A statement that the following documents will constitute a "valuation" and will be provided to the consumer: AVMs, BPOs, and internal review documents used by creditors to reconcile multiple values;
- Every appraisal or valuation a creditor orders in connection with a loan application will be secured by the creditor for the creditor's sole use to determine the value of the applicant's residential property;
- The creditor will retain the authority to determine how any appraisal or valuation ordered in connection with a loan application will be analyzed and used when rendering a credit decision; and
- The creditor will retain the responsibility to select, manage, and pay direct compensation to the appraiser in every instance, even if the consumer chooses to have a separate appraisal conducted in connection with a higher-risk mortgage.

Alignment of TILA and ECOA Disclosure Delivery Requirements.

New TILA section 129H requires a creditor, at the time of an initial mortgage application, to provide a consumer with a statement that any appraisal prepared for the mortgage is for the sole use of the creditor, and that the consumer may choose to have a separate appraisal conducted at the consumer's expense. Wells Fargo supports the Agencies' goal to provide consumers with information about the appraisal process. However, Wells Fargo recommends that the Agencies should use their broad exemption authority under TILA to apply a new disclosure delivery requirement that will give a creditor three business days after the receipt of an application to notify the consumer of the consumer's right under TILA to receive a written copy of appraisals developed in connection with the application. The disclosure delivery timing adjustment will align the delivery obligations under TILA and ECOA and will enable a consumer to receive the appraisal disclosure in the three-day disclosure package along with other pertinent information about the credit decision and loan process. The adjustment will promote consistency in the timing of the delivery of appraisal disclosures across the industry and eliminate the administrative burden that would be incurred by a creditor from supporting separate ECOA and TILA appraisal disclosure delivery processes.