October 15, 2012

Office Comptroller of the Currency, Treasury Department
Docket No. OCC-2012-0013; RIN 1557-AD62

Board of Governors of Federal Reserve System
Docket No. R-1443; RIN 7100-AD90

National Credit Union Administration
RIN 3133-AE04

Bureau of Consumer Financial Protection
Docket No. CFPB-2012-0031; RIN 3170-AA11

Federal Housing Finance Agency
RIN 2590-AA58

Re: Appraisals for Higher-Risk Mortgage Loans

Dear Sir or Madam:

The American Society of Appraisers (ASA) and the National Association of Independent Fee Appraisers (NAIFA), representing thousands of our nation's leading valuation professionals, appreciate the opportunity to comment on the rule governing appraisals for higher-risk mortgage loans proposed by the five federal agencies referenced above. ASA and NAIFA are professional appraisal organizations which teach, test and credential qualified individuals in residential and commercial real estate appraisal practice and appraisal review.[1]

The proposal, which implements amendments to the Truth-In-Lending Act (TILA) required by Title XIV, Subtitle F ("Appraisal Activities") of the Dodd-Frank Wall Street Reform and Consumer Protection Act, establishes appraisal requirements for "higher-risk" mortgage loans.[2] When mortgage lenders underwrite traditional mortgage loan applications, they typically look to the creditworthiness of the borrower(s) and to the fair market value of the residential property collateralizing the loan, to determine whether to extend credit and, if so, at what interest rate. In situations where the creditworthiness of the prospective borrowers is marginal (or, presumably,

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[1] Additionally, ASA, which is a multi-disciplinary appraisal organization, teaches, tests and credentials its members for professional appraisal practice and appraisal review in business valuation and in personal property valuation (including machinery and equipment, fine art, antiques, gems and jewelry and the contents of offices and homes).

[2] The new TILA (Regulation Z) section involving appraisals for higher-risk mortgages, is section 129H. The term "higher-risk mortgage" is generally defined as a closed-end residential mortgage loan secured by a principal dwelling with an annual percentage rate (APR) that substantially exceeds (under a formula set out in section 129H) the average prime offer rate (APOR) for a comparable transaction as of the date the interest rate is set. The interest rate thresholds are substantially similar to rate triggers currently in Regulation Z for "higher-priced mortgage loans".

where the value of the collateral property is only marginally sufficient to cover the amount loaned), lenders nevertheless will sometimes make the mortgage loan but at an interest rate considerably above the rate extended to more qualified buyers – reflecting the lender's enhanced credit risk. Such loans are often included in the definition of a "higher-risk" loan.

Our organizations appreciate the time and attention the agencies have devoted to proposing, in a relatively brief period of time, a large number of regulations to implement the many mortgage-related provisions of Dodd-Frank. Most of the recent proposals involve appraisal issues that are important to our real estate appraiser members either directly (e.g., the higher-risk mortgage rule, the appraisal independence rule and a series of forthcoming rules involving AMCs, AVMS and other matters) or indirectly (e.g., the mortgage servicing rule). With respect to the higher-risk mortgage loan proposal, we support a number of its provisions but have concerns with, and urge the agencies to adopt the changes recommended herein, to others. Our specific views on the proposal are set forth below in section I (involving reverse mortgages and creditor appraisal review obligations); and, in section II (our responses to the 44 questions asked by the agencies):

## I (A) <u>The Reverse Mortgage Exclusion Is Inappropriate</u>

**A Blanket Exemption of Reverse Mortgages From the Proposal's Appraisal Requirements Is Unjustified:** The agencies request comment on the appropriateness of the proposed exemption of reverse mortgages from the higher-risk mortgage rule, specifically, the appraisal protections. Our organizations believe that the proposed blanket exemption of reverse mortgages from the rule's appraisal requirements would severely harm consumers – particularly senior citizens who are the most likely to utilize reverse mortgages – and is contrary to sound public policy.[3] We share the agencies' expression of concern in the proposal's commentary over the likely deleterious effects of the exclusion. But, unlike the agencies, we strongly oppose a strategy of putting off a solution until an uncertain date in the future. Our view is that the results of the reverse mortgage study conducted by the CFPB and sent to Congress in June of this year, provides more than adequate reasons for the agencies to act now to extend the higher-risk mortgage proposal's appraisal protections to those who may be considering a reverse mortgage. Under Dodd-Frank, the Bureau has the authority to establish such protections now.

To be specific, ASA and NAIFA would not object to an exemption for those reverse mortgages that are regulated by the Federal Housing Administration (FHA) under its Home Equity Conversion Mortgage (HECM) program which provides consumers with a comprehensive and mandatory set of appraisal protections. In this regard, it is important to recognize that while many reverse mortgage transactions are regulated by FHA, not all of them are. The agencies acknowledge that fact. Given the centrality of a reliable appraisal to a reverse mortgage transaction (it establishes, for example, the baseline amount of money a consumer receives and provides consumers with other vital information), the idea of exempting any subset of the universe of reverse mortgages from the proposed rule's appraisal requirements, strikes us as extremely unwise on its face.

[3] The exemption for residential structures, such as manufactured housing, seems appropriate.

The agencies cite several reasons for proposing the exemption of reverse mortgages from the rule's appraisal requirements. We believe that none of them, either individually or collectively, are persuasive from a public policy perspective. Moreover, even the language in Dodd-Frank which defines a "high-risk mortgage" as a "residential mortgage loan other than a reverse mortgage that is a qualified mortgage, as defined in section 129C…" does not require an exemption for reverse mortgages. To the best of our knowledge, there are no reverse mortgages that have been defined as a qualified mortgage. Additionally, the qualified mortgage provisions of Dodd-Frank appear to specifically exclude reverse mortgages. It is also important to note that the agencies have yet to adopt final qualified mortgage regulations and that previous proposals (by, for example, the Federal Reserve) have excluded reverse mortgages. We do not know, of course, whether a future qualified mortgage regulation will include reverse mortgages or a category of them.

We recognize that an interest rate definition of what constitutes a "higher-risk" reverse mortgage does not currently exist. Nevertheless, the absence of such a definition does not compel the agencies to omit reverse mortgages from the appraisal protections of the higher-risk mortgage rule. Indeed, we believe that reverse mortgages are no less risky to consumers than high interest rate mortgages; and, in fact, may well be riskier.

Moreover, it is important to remember the key findings of the recent exhaustive study of reverse mortgages by the Consumer Financial Protection Bureau.[4] The Bureau found that "reverse mortgages are complex products and difficult for consumers to understand"; that "the tools – including federally required disclosures – available to consumers to help them understand prices and risks are insufficient to ensure that consumers are making good tradeoffs and decisions"; that "reverse mortgage borrowers are using the loans in different ways than in the past, which increase risks to consumers"; and that "product features, market dynamics, and industry practices [such as misleading advertising and reverse mortgage borrowers withdrawing more of their money upfront than in the past] also create risks for consumers." The Bureau's reverse mortgage study, in its entirety, stands for the proposition that nothing is more important to consumers than a reliable appraisal of the property serving as collateral in a reverse mortgage transaction. The determination of the fair market value of the collateral property is a lynchpin of the transaction. We have great difficulty understanding, therefore, why the CFPB and the other agencies seek to exempt any non-FHA regulated reverse mortgages from the rule's appraisal requirements. We note, in this regard, that the Federal Reserve Board in 2010 proposed and considered the adoption of consumer protections in reverse mortgages, protections which included significant disclosure of the appraised value of the property being mortgaged.

Most importantly, perhaps, is that Dodd-Frank specifically authorizes the CFPB to issue regulations it determines, as a result of its reverse mortgage study, "are necessary or appropriate to accomplish" the Dodd-Frank Act's consumer protection purposes. Our view is that the Bureau should not miss the opportunity provided by the higher-risk rule to protect vulnerable consumers from the inherent risks of reverse mortgages.

[4] "Report To Congress On Reverse Mortgages" June 2012, by the Consumer Financial Protection Bureau.

## I (B) Creditors' Appraisal Review Responsibilities Under The Rule Could Be Troubling And Require Clarification

The proposal addresses the responsibilities of creditors to review appraisals in connection with higher-risk loans, including the actions they must take to qualify for the rule's safe harbor protections. Although our organizations support the thrust of the safe harbor proposal, we do have some possibly serious concerns - concerns, we acknowledge, which may have more to do with lack of clarity than with substance. The potential concern involves the commentary which states that the rule's certified and licensed appraiser standards apply to "an appraiser's development and reporting of the appraisal" under the rule, but not to the "review of the appraisal" under new paragraph (3) of FIRREA section 1110. Paragraph 3, which was added to FIRREA as a part of Dodd-Frank's appraisal reforms, requires federal financial institutions regulatory agencies to establish review standards to ensure that federally-related appraisals comply with USPAP.[5] The agencies proposal also says that the appraisal requirements of section 1110(3) "...are not relevant for purposes of whether an appraiser is a certified or licensed appraiser under proposed section 1026.xx(a)(1)."

We understand that under the safe harbor provisions, creditors in high-risk transactions are required to perform a wide-range of appraisal review functions. Some of them are ministerial and involve the verification of information that is typically reflected on the face of the appraisal – information which indicates that it meets the rule's appraisal requirements (e.g. it was performed by a state certified or licensed appraiser; that the appraiser was inside the property being valued). Other functions involve more substantive analytical determinations (e.g., that it was performed in adherence to USPAP). We infer, but are uncertain, that the agencies' purpose in distinguishing between appraisal reviews involving the higher-risk rule and appraisal reviews for other federally-related transactions governed by Title XI of FIRREA is to shield creditors making higher-risk loans from the appraisal review requirements of Title XI.

Our organizations believe that existing federal laws require lenders who engage in federally-related transactions to exercise a high degree of due diligence to ensure that the appraisals they order meet Title XI's consumer protection and safety and soundness requirements. We are concerned that the higher-risk proposal appears to "lower the bar" for creditors in connection with their appraisal review responsibilities in higher-risk lending. It appears that the proposed rule allows creditors to carry out <u>any and all of their appraisal review functions, no matter how substantive, without reliance on state certified or licensed appraisers</u>. While we generally support the rule's safe harbor provisions and do not believe that creditors should be required to use certified or licensed appraisers to perform appraisal review functions which are administrative or ministerial in nature, we do not support a higher-risk rule which permits creditors to avoid the use of state certified or licensed appraisers in every appraisal review scenario. If that is what the agencies intended, we strongly oppose this result. If it is not what the agencies intended, then clarification is necessary and would be appreciated.

[5] Although the Interagency Appraisal Guidelines have long addressed the appraisal review responsibilities of regulated financial institutions, we do not believe that the banking agencies have proposed specific regulations to implement the requirements of paragraph 3 of FIRREA section 1110.

## II. ASA And NAIFA Comments On Specific Questions Asked By The Agencies

Our organizations' responses to the 44 questions posed by the agencies are provided below:

Question (1) **Should the proposed rule's appraisal requirements apply to all high-risk loans irrespective of the lender and the dollar amount involved**: We believe, as the agencies do, that Congress enacted the higher-risk mortgage appraisal requirements as an amendment to the Truth-In-Lending Act because TILA applies to all mortgage loans whether made by so-called "traditional" lenders or by independent mortgage banks. We also share the agencies' view that given the inherent riskiness of higher-risk credits, the rule's appraisal requirements should apply to all such loans, including those in amounts below the $250,000 de minimis threshold established by the banking agencies in their Interagency Appraisal Guidelines.

Although conventional loan transactions are not the subject of the proposed rulemaking, we nevertheless believe it is appropriate for us to reiterate our strong objections to the threshold levels for residential (and commercial) real estate loans that can and do result in the denial to large numbers of consumers of the protections provided by professional appraisals. We look forward to the opportunity to engage with the Bureau and the agencies in connection with the Dodd-Frank provision requiring the agencies to determine in writing that their threshold level (below which a professional appraisal is not required in federally-related residential transactions) does not represent a threat to the safety and soundness of financial institutions; and, importantly, requires the Bureau to concur in that determination. We respectfully urge the agencies and the Bureau to begin that process as soon as possible;

Question (2) **Should the final rule address any particular Title XI requirement, such as whether appraisals on higher-risk mortgages should be performed by licensed or certified appraisers:** We believe the final rule should specify the use of certified residential appraisers for appraisals involving higher-risk mortgage transactions. ASA and NAIFA and other professional appraisal organizations have long advocated the desirability of establishing more rigorous requirements for those performing federally-related appraisals. Not long ago, FHA decided to require that appraisers new to its eligible appraiser roster must have a certified residential appraiser credential, rather than just an appraiser license, in connection with its residential loan insurance program. A number of states have phased out, or are in the process of phasing out, the licensed appraiser credential in favor of a certified residential credential. We recommend that the agencies adopt this higher qualifications standard when it issues its final rule on higher-risk mortgages;

Question (3) **Should the rule address when a certified vs. a licensed appraiser should be mandated:** Consistent with our response to question (2) above, we believe the final rule should require a certified residential appraiser credential for all appraisals in high-risk mortgage transactions. We also urge the agencies to consider establishing a requirement or at least a recommendation in its final rule that when the collateral property is a complex property – either because of its uniqueness, its size or other distinguishing feature – a state certified residential appraiser <u>who is also credentialed by a recognized professional appraisal organization be utilized whenever possible</u>. Individuals credentialed by professional appraisal organizations typically have more experience, training and education than appraisers who lack such a credential;

Question (4) **Should the rule address issues of appraiser competency:** We do not believe there is a need for the rule to formally address appraiser competency issues (so long as the individual given the appraisal assignment is properly credentialed and the creditor exercises proper due diligence with respect to hiring the appraiser and reviewing the appraisals). However, we do recommend that the commentary accompanying the final rule emphasize a creditor's obligation to ensure that the engagement letter properly lays out the required scope of work, that the appraiser is independent and that the appraiser possesses the appropriate experience to perform the assignment including, when necessary, geographic competency. If creditors take all the necessary steps spelled out in the rule, including meeting the safe harbor provisions governing TILA section 129H, creditor liability should not be an issue;

Question (5) We believe that responses to this question should most appropriately come from consumer representatives and from the mortgage lending community;

Questions (6) – (9) **Calculation of APR in connection with appraisal fees for higher risk mortgages**: As a general matter, our organizations believe that the calculation of an APR should include appraisal fees for higher-risk mortgages (indeed, for all mortgages) along with all other third party fees paid by the homebuyer to obtain a mortgage. While our organizations do not claim any special expertise on the important issue of how to calculate the APR, we do believe all costs paid by the consumer should be included in the calculation, whether the fee is or is not retained by the lender. Inclusion of the appraisal and other third party fees paid by homebuyers to obtain a loan may have a very modest impact on the numbers of mortgage loan transactions that meet the definition of a higher-risk mortgage. The essential issue involves the added protections to consumers and to the mortgage lending system provided by the appraisal requirements for higher-risk mortgages. It is our view that from a public policy perspective, the final rule should be as inclusive as possible in providing these added protections.

Additionally in connection with this question, we think it important to point out that most appraisals today are booked through Appraisal Management Companies (AMCs), many of which are affiliates of mortgage lenders. If the agencies determine that the final rule should include only fees paid to or retained by the mortgage lender in calculating APR, then the fees involved in ordering the appraisal through an AMC owned by the lender would necessarily be part of that calculation.

Questions (10) - (11) **Criteria for establishing when a reverse mortgage transaction constitutes a higher-risk loan and the appropriateness of an exclusion of such transactions:** A summary of our views on this very important issue are set forth in Section 1 of this comment letter. Our organizations strongly oppose the proposed rule's blanket exemption of reverse mortgages from the higher-risk mortgage appraisal protections. As to question (10) itself, we recognize that although reverse mortgages have been available in the mortgage marketplace for many years, the agencies have not yet developed indices or other criteria for establishing that a reserve mortgage is a higher-risk mortgage. We believe that the agencies' decision whether to extend the proposal's appraisal protections to reverse mortgages should not hinge on the existence or non-existence of such indices. Given the significant risks to consumers of reverse mortgages that are not regulated by FHA; given the findings of the CFPB's study of reverse mortgages; given the centrality of reliable appraisals to protect consumers in any reverse mortgage transaction; and, given the Bureau's existing authority – without additional Congressional authorization – to establish appraisal and disclosure requirements without the need to link them to the higher-risk rule, we urge the agencies to provide such protections to consumers now.

If the agencies are unwilling to do so as part of the higher-risk rule, we nevertheless urge that the rule not establish an exemption for reverse mortgages. Instead, the final rule's commentary should only say that while the rule does not presently apply to reverse mortgages, a decision on consumer protections and safety and soundness requirements is pending. An exemption sends a wrong and misleading signal to consumers and to lenders who offer reverse mortgages.

Questions (12) – (14) **Should construction loans or other loan categories be excluded from the rule:** Sound public policy dictates that the agencies not exclude construction loans from the higher-risk rule. Those who apply for a construction loan whose interest rate terms meet the definition of a higher-risk loan, are likely to be individuals or small business firms which need the protections afforded by the rule. Moreover, if such individuals or firms are exempted from the rule, the potential negative consequences of obtaining a higher-risk loan without the rule's protections could well impact multiples of individuals and investors.

As to bridge loans, we surmise that the length of the loan, the value of the collateral property and the terms and conditions of the loan are all factors to be considered. With respect to the question whether other categories of loans should be exempted, our view is that when the interest rate on any loan meets the definition of a higher risk loan, the agencies default position should be that they are covered unless there is a compelling public policy reason not to do so;

Question (15) **Safe Harbor Provisions:** With one or two exceptions, our organizations support the proposed rule's safe harbor provisions.

Is The Appraiser Properly Credentialed – There are two issues here:

First, with respect to whether an individual retained by a creditor to perform an appraisal in a higher-risk loan transaction is properly credentialed under the criteria established in the final rule, the National Registry maintained by the Appraisal Subcommittee of the FFIEC is the authoritative source for that information; and a creditor who relies on the Registry (and, if called on, can demonstrate such reliance), is entitled to safe harbor protection on the credential issue. If the final rule requires that a complex assignment be performed by a certified residential appraiser who is also credentialed by a professional appraisal organization – a position we believe will optimize consumer protection – a creditor should be required to demonstrate that it has contacted that professional association to verify the appraiser's credential.

Second, the proposed rule states that the creditor must verify through the Registry that the appraiser who signs the appraisal report "holds a valid appraisal license or certification in the state in which the appraised property is located." (emphasis added). In this regard, it is important for the agencies to understand that under Title XI of FIRREA and the policies of the Appraisal Subcommittee (ASC), an appraiser properly licensed or certified in one state is permitted to value property in another state if that appraiser has received a "temporary practice" permit from the state in which the property is located. Under ASC policies, states are required to grant such temporary licenses if the applicant is properly credentialed in another state. Temporary practice is important to facilitate the valuation of property in transactions that are in or that impact interstate commerce. Accordingly, ASA and NAIFA recommend that the final rule make clear that an appraiser with a temporary practice permit meets the credentialing requirements. In this regard, the language of the proposed rule should be modified along the following lines: If the appraiser holds a valid appraisal license or certification in the state in which the appraised property is located "*or has been granted a temporary practice permit by the state in which the appraised property is located and the creditor has verified that permit…*".

How Can Creditors Be Certain That The Appraisals They Order Adhere to USPAP and Comply With Title XI – We share the agencies view that in the real world, a typical creditor would not be able, on its own, to determine that an appraisal it has ordered for a higher-risk transaction adheres to USPAP and complies with Title XI – a serious problem in the context of creditor liability under TILA. We also generally concur with the checklist of items in the written appraisal report (specified in Appendix N to Part 226 of the proposal) that a creditor would have to confirm in order to receive the safe harbor protection.

However, we have some serious concerns about the rule's apparent failure to provide guidance or standards which would give the public and regulators reasonable assurance that a creditor has confirmed that the appraisal contains all the information and data specified in Appendix N. We acknowledge that confirmation of some of the Appendix N items are within the ministerial capabilities of creditors (e.g. identifying the creditor who ordered the report; confirming that the report reflects a physical inspection of the property including the interior). On the other hand, much of the Appendix N data and information that should be in the appraisal report and that must be confirmed by the creditor requires a good deal of appraisal expertise – the kind that only a professional appraiser possesses (e.g., confirms that the appraisal report shows which valuation approaches were used to conclude fair market value, including a reconciliation if more than one approach was used). In this regard, the commentary accompanying the rule states " Compliance with the Appendix N safe harbor review would require the creditor to check the key elements of the written appraisal and the appraiser's certification on its face for completeness and internal consistency." While the commentary also states that the proposed rule would not require the creditor "to make any independent judgment about or perform any independent analysis of the conclusions and factual statements in the written report," we believe more clarity is required as to what the creditor is or is not required to do to receive the safe harbor protections. As stated above, the proposal fails to establish adequate guidance on how a creditor can credibly comply with its obligations under the safe harbor provision. One important question raised in this regard is whether, under the proposal, a creditor is ever required to conduct a substantive review of the appraisal along the lines required in a recent rulemaking proposal by the banking agencies involving leveraged lending by larger financial institutions. Our hope is that the higher-risk rule will maintain or even strengthen the appraisal review responsibilities of creditors and not diminish them.

Questions (16) – (17) **Replacing the term "second appraisal" with the term "additional appraisal" in connection with a resale of a property within 180 days of its original sale and**

**at a higher price:** We have no objections to the rule's use of the term "additional appraisal". We do recommend, however, that the final rule include some examples to illustrate what the term means and requires. We also support the proposal's clarification that the creditor is required to obtain the additional appraisal " prior to the consummation of the higher risk mortgage loan."

Questions (18) – (19) **Should any classes of higher risk loans where there is a resale within 180 days of the original sale be exempted from the additional appraisal requirement:** Given the inherent riskiness of higher-risk loans and the need to protect consumers and taxpayers from the dangers of flipping, we do not believe that any classes of higher risk loans should be exempted from the additional appraisal requirement. We are unaware of any situations in which it is difficult to find two appraisers to independently value a rural property. Our view is that the final rule should reflect a strong presumption that the additional appraisal is necessary to protect consumers and safety and soundness.

Questions (20) – (21) **Should the additional appraisal requirement apply to situations in which the seller acquires the property not by purchase but by inheritance, divorce or gift:** Our organizations do not object to excluding non-purchase acquisitions from the additional appraisal requirement.

Question (22) **Should the additional appraisal requirement exclude situations in which the seller of the property had previously acquired a partial financial interest in the property:** We oppose such an exclusion given the inherent riskiness of higher risk loans and the dangers of flipping schemes. If the individual who sells a property within 180 days of its acquisition had previously acquired even a partial financial interest in the property, we believe the additional appraisal requirement should apply.

Question (23) **Use of various terms such as "acquisition," "seller," etc:** We concur with the agencies' approach to the terminology addressed in this question.

Questions (24) – (27) **Criteria for whether additional appraisal is required – Determining Acquisition Price:** We appreciate the potential difficulty a creditor might experience in determining whether a sale of property within 180 days of the seller's previous purchase requires an additional appraisal because the subsequent sale is at a higher price. Our residential appraisers often see situations where seller concessions of one kind or another require an adjustment – sometimes a significant one – between the so-called sale price and the price the acquirer actually pays. Because these situations are somewhat commonplace and because appraisers understand how seller concessions affect price, we believe the final rule should require that the creditor consult with the appraiser retained to value the collateral property as a part of the process of determining the nature and extent of the increase in price between the original sale and the subsequent one; and, as a consequence whether an additional appraisal is required. An appraiser's expertise is similarly indispensible in connection with a higher-risk transaction that involves an individual property that is a part of a bulk sale.

Questions (28) – (29) **Should the additional appraisal requirement be omitted in situations where the higher price paid within the 180 day period is de minimis:** As a general matter our organizations agree that when a property is re-sold within the 180 day period at a price that is insignificantly higher than the previous price, an additional appraisal should not be mandated. The key issue, of course, is where to draw the line. In this regard, we have concluded that given the deflation of home values in most of the country the $1,000 number recommended by the consumer groups is the appropriate number. The percentage numbers suggested by certain mortgage lenders, even the 10% number, is excessive and would defeat the anti-flipping purpose of the second appraisal requirement. We also believe that the nature of the test which determines whether the additional appraisal requirement is triggered is less important than capturing the public policy purpose behind the test. Whether a fixed dollar test or a fixed percentage test is selected, the resulting dollar amount must be low enough to discourage anyone who might otherwise be tempted to engage in a flip. A $5,000 profit within a few months of a prior purchase may seem more than an adequate temptation to some individuals. Accordingly, the dollar amount which would trigger an additional appraisal within the 180 day time-frame, should be quite low.

Question (30) **Should the rule establish restrictions on who a creditor can hire when two appraisals are required:** This is an important issue which actually relates to appraiser independence under USPAP and the appraiser independence provisions of Dodd-Frank. Clearly, the rule should explicitly prohibit a creditor from using the same appraiser to value both transactions. The agencies ask whether the rule should address whether the creditor is permitted to hire two appraisers from the same valuation firm or, if the appraisal is ordered through an Appraisal Management Company (AMC), from the same AMC. We recognize and fully respect the fact that USPAP requires complete appraisal independence of all state certified or licensed appraisers whether they are employed by the same valuation firm or are both on an AMC's eligible roster. An appraiser's failure to demonstrate such independence, if discovered after the fact of the appraisal, will (and should) result in stiff penalties imposed on the appraiser. On the other hand, the proposed rule involves issues of public policy which raise different questions. We have concluded that the rule should prohibit creditors from hiring appraisers from the same valuation firm. With respect to AMCs, we believe that a creditor should be prohibited from hiring the two appraisers through the same AMC but only when the AMC is an affiliate of the creditor.

Question (31) **Requirements involving the contents and purposes of the additional appraisal:** We agree with the requirements and purposes that the agencies assign to the additional appraisal. We agree that the additional appraisal should include an analysis of the difference in sales prices, changes in market conditions and any improvements made to the property between the date of the previous sale and the current sale. We believe that these protocols are consistent with USPAP. We also agree with the agencies proposed construct relative to the terms "date the seller acquired the property" and the " date of the consumer's agreement to acquire the property" as the dates the additional appraisal must analyze in considering changes in market conditions and any improvements made to the property.

Question (33) **No charge to the consumer for the additional appraisal:** We concur with the proposal that in situations where two appraisals are required, the creditor is only permitted to charge the consumer for one of them. We concur, as well, with the proposed nomenclature change from the word "applicant" to "consumer" to ensure that the rule continues to apply even after consummation of the loan. We do have a modest concern relative to the agencies' clarifying comment that while the creditor is prohibited from charging the consumer for the cost of the additional appraisal, the creditor is nevertheless permitted to charge the consumer for the creditor's cost of "providing the consumer with a copy of the appraisal." While we do not object to the policy behind this clarification, we urge that the final rule also clarify that any such charge must only reflect the actual administrative cost of providing the additional appraisal and nothing more.

Question (34) **Creditor Reasonable Diligence Standard and the issue of source documents relative to determining whether a second or additional appraisal is required:** We concur with the creditor "reasonable diligence" standard proposed in the rule. We believe that the proposed source documents on which the creditor can rely in meeting its reasonable diligence responsibilities are appropriate. We share the concern of the agencies that because the rule permits the seller to voluntary provide several of the source documents (rather than the creditor having to obtain them from public records), there is a possibility of document alteration. But, we also agree that the absence of such a flexible approach could persuade creditors not to make higher-risk loans at all; and that would be an undesirable outcome for consumers whose only source of mortgage money requires a higher-interest loan.

Questions (35 – 36) **Creditor reliance on signed USPAP compliant appraisal reports regarding a seller's acquisition date and price:** Our organizations believe that the rule should permit creditors to rely on the entire contents of written appraisal reports prepared by state certified and licensed appraisers. As a general matter, we believe appraisal reports prepared by properly credentialed appraisers are entitled to a presumption of accuracy, completeness and reliability by the agencies in this and other rulemakings (we also strongly believe in the need for an effective system – by users and by state and federal regulators – of due diligence and oversight of appraisal services; and vigorous enforcement action if professional appraisal requirements are violated). We believe the higher-risk rule should permit creditors to rely on the written appraisal report so long as the appraiser is properly credentialed and so long as the creditor has met its other obligations under the rule.

With respect to the specific issue of creditor reliance on the appraisal report to establish the seller's acquisition date and price in higher-risk loans, we appreciate the agencies' recognition that USPAP's requirement (Standards Rule 1-5) involving analysis of all sales of the subject property occurring within the three year period prior to the effective date of the appraisal, is modified, importantly, by the phrase, if that information is available to the appraiser " in the normal course of business." It is important that the final rule on the issue of acquisition date and price in higher-risk transactions should reflect the fact that this information is not always available to the appraiser in the normal course of business. In this regard, we respectfully urge the regulators to be cautious about imposing requirements on appraisers involving information, analysis or data that are not a responsibility of appraisers in a typical USPAP-compliant report. We understand that the agencies have the authority to do that; but any such additional requirements in the instant higher-risk rule or in other rules should be imposed only after the professional appraisal community, including the Appraisal Foundation, has ample opportunity to fully comment.

Questions (37-41) **Should the rule permit creditors to rely on other information sources, including oral representations by parties to a transaction, to make determinations involving the need for two appraisals:** We recognize that on occasion creditors may be forced to rely on atypical or less reliable sources of information (e.g. from the interested parties themselves) in order to determine whether a higher-risk transaction requires two appraisals. We share the concern and caution expressed by the agencies regarding creditor reliance on such atypical or possibly self-interested information. While our organizations generally favor rigorous requirements to protect consumers and safety and soundness, we also believe that creditor requirements should be weighed against the desirability of a public policy which fosters high-risk mortgage lending when only a high-risk loan will meet the homeownership needs of lower-income consumers. Accordingly, we believe the agencies might want to consider a carefully constructed "good faith exception" standard that would allow creditors to utilize nontraditional sources of information, including oral statements by the interested parties, to determine whether an additional appraisal is required – but only if a creditor makes a good faith determination that more reliable sources of information are unavailable.

Question (42) **Appraisal report notifications to consumers:** The information about the appraisal report required to be provided to consumers until TILA and the ECOA differ in certain respects. While both require that the notice be provided to consumers at the time of the initial mortgage application, TILA section 129H(d) mandates a statement that any appraisal prepared for the higher-risk mortgage is for the sole use of the creditor (and that the consumer can order one for their own use at their expense), while the ECOA notice advises that the consumer is entitled to a copy of each written appraisal or valuation ordered by the creditor. As a general matter, we have no objection to the agencies' decision to combine the disclosures into an integrated single statement. We understand that based on the results of the testing of the settlement disclosure form, the agencies have concluded that the appraisal notices should be combined but utilizing language different from that found in the statutes. Although we question the prudence of failing to disclose that the appraisal report prepared for the creditor is for the creditor's sole use, we do not challenge the agencies' statement that the results of consumer testing indicate that omitting that statement is appropriate.

Although not specifically addressed in the proposed higher-risk mortgage rule, its discussion about disclosure forms allows our organizations to comment very briefly on another consumer issue – the apparent preliminary decision of the CFPB under its " know before you owe" initiative to conflate, in the Good Faith Estimate and the Settlement forms, the portion of the appraisal fee that goes to the appraiser with the portion of the appraisal fee that goes to an Appraisal Management Company (AMC) when creditors use an AMC – as happens in most cases – to order the appraisal. <u>Our strong view is that consumers are denied critical information (and otherwise disadvantaged) about how their mortgage dollars are being spent when these fees are conflated. We are hopeful that when the Bureau makes its final determination on these forms, it will separate the two fees.</u>

Questions (43-44) **Other issues relating to consumers notifications about appraisal reports**: The agencies request comment on a number of issues concerning disclosures to consumers about appraisal reports in connection with higher-risk transactions.

First, the proposed rule states that when two or more consumers apply for a higher-risk mortgage, the creditor is required to provide the necessary disclosures to only one of them. While we appreciate the agencies' concern that sending disclosures to each applicant might be burdensome, we disagree and recommend that the final rule require that the disclosures be addressed to all named applicants.

Second, we do not object to the proposed rule's treatment of the timing of the disclosures. With respect to situations in which a creditor has a reasonable, but inconclusive, belief that the transaction will be a higher-risk and only later determines that it is, we agree that the creditor should be permitted the opportunity to cure and provide the disclosures at a later time in the application process, so long as the delay is reasonable.

We hope the agencies find our views and responses to the questions, helpful. If you have any questions or require additional information please contact our government relations representative in Washington, DC, Peter Barash at peter@barashassociates.com or by phone at 202-466-2221; or ASA's Director of Government Relations, John Russell at jrussell@appraisers.org or by phone at 703-733-2103.

Sincerely,
American Society of Appraisers
National Association of Independent Fee Appraisers