



**National Association
of Federal Credit Unions**
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NAFCU | Your Direct Connection to Education, Advocacy & Advancement

October 15, 2012

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1500 Pennsylvania Ave. NW
(Attn: 1801 L Street)
Washington, D.C. 20220

Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

RE: Appraisals for Higher-Risk Mortgage Loans – 12 CFR 722
Docket No. CFPB-2012-0031;
Appraisals for Higher-Risk Mortgage Loans – 12 CFR 1026

Dear Ms. Jackson and Ms. Rupp:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents federal credit unions, I write to you regarding a proposed rule on appraisals for higher risk mortgage loans jointly issued by the Consumer Financial Protection Bureau (CFPB), the National Credit Union Administration (NCUA), the Department of Treasury, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Housing Finance Agency (the Agencies). *See* 77 Fed. Reg. 54722 (September 5, 2012).

General Comments

The proposed rule would implement relevant provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) on higher-risk mortgage loans. In addition to defining what constitutes a higher-risk mortgage loan, the proposal would require that lenders obtain a written appraisal by a certified or licensed appraiser, and that the appraisal include a physical visit of the interior of the property. Also, a credit union would be required to provide a statement indicating that the credit union may order an appraisal, charge the applicant for it, and that the applicant may order, at his or her own expense, an additional appraisal. Further, and very importantly, the lender must obtain an additional appraisal for a higher-risk mortgage loan which is sought for a

purchase of a principal dwelling that was previously acquired within 180 days of the agreement to purchase the property.

NAFCU has a number of concerns about the proposed rule that we strongly urge the Agencies to consider. First and foremost, as we have stated in other rulemakings undertaken by the CFPB, we strongly believe that the CFPB (and the Agencies) should only promulgate regulations that are absolutely required by the Dodd-Frank Act and must be prescribed by a date-certain. As the Agencies are aware, credit unions are subject to the host of proposed rulemakings that the CFPB is seeking to adopt. Both independently, but much more significantly when taken together, these rulemakings will lead to fundamental changes in credit unions' mortgage lending business and potentially negatively impact credit union members. Thus, NAFCU urges the CFPB and the Agencies to refrain from undertaking rulemakings that Congress either provided discretion over implementing or those which Congress did not place a date-certain for implementing. This undertaking represents an example of a rulemaking which the Agencies should, at the very least, delay implementing.

If the Agencies determine to move forward with the rulemaking, NAFCU recommends a number of specific changes or clarifications.

Definition of "Higher Risk Mortgage Loans"

Initially, we recommend that the definitions of "higher-risk mortgage loans" and "higher priced mortgage loans" are as consistent as possible to minimize confusion. While we understand there are statutory limitations that would make harmonization of the definitions difficult in some cases, the Agencies do have the ability to ensure consistency in several areas. For example, as discussed further below, the exceptions from the definition of both types of loans can be consistent. Additionally, the Agencies should consider using a different term other than "higher-risk mortgage loans" because of the obvious similarity with the existing term "higher priced mortgage loans."

To ensure consistency between the two terms, and because underlying public policy considerations of the terms are similar, the Agencies should exempt from the definition of "higher-risk mortgage loans" several classes and types of loans. As is the case for "higher priced mortgage loans," as defined in Regulation Z, the following should be excluded: (1) a transaction to finance the initial construction of a dwelling; (2) a temporary or "bridge" loan which term is twelve months or less, such as a loan to purchase a new dwelling where the consumer plans to sell a current dwelling within twelve months; and (3) a home equity loan. *See* 12 CFP 1026.35(a)(3). In addition, the definition should not include loans in rural areas, sales by government agencies, sales of properties acquired by inheritance, sales of properties acquired through a divorce decree or other court decrees, and sales by financial institutions. Each of these types of transactions has unique characteristics that warrant exceptions, and thus should be excluded from the definition in addition to those proposed (exceptions for "qualified mortgages," reverse mortgage transactions, and loans secured by residential structures).

Proposed Second Appraisal Requirement

Next, NAFCU opposes the proposed second appraisal requirement for loans to acquire a principal dwelling which the seller acquired less than 180 days from the date of the acquisition by the borrower. NAFCU understands the concern about and would support efforts to prevent fraudulent “flipping.” However, we do not believe the Agencies have struck the right balance between prevention of fraudulent flipping and ensuring that legitimate transactions are not unwarrantedly made more costly and less attractive.

NAFCU believes that incorporating more exemptions from the second appraisal requirement is advisable and would help mitigate the impact of the proposed rule on not only lenders, as a result of greater operational and compliance costs, but also on consumers because of the potential, if not likely, difference between the two appraisals. We believe that the following loans should be exempted to achieve these goals: loans for properties where the seller has made improvements or renovations; loans which property sell price is dictated by market conditions; loans in rural areas; loans where the seller is a government agency; loans where the property is acquired by inheritance, or acquired through a divorce decree or other court decrees; and loans where the seller is a federally-insured financial institution. As we maintain with respect to the definition of “higher-risk mortgage loans,” each of these transactions have unique characteristics that warrant exceptions.

Other Comments

In addition, NAFCU strongly urges the Agencies to ensure that the proposed regulations are not in conflict with requirements imposed by Fannie Mae and Freddie Mac. To do so, the Agencies should reach out to both entities, as well other secondary market participants, including credit unions, to better understand existing appraisal requirements and ensure consistency and avoid unnecessary conflict.

Lastly, but importantly, we ask that the Agencies provide clarification, as well as a sample disclosure statement, for credit unions to use to comply with the proposed required statement. The sample statement should also specify that (1) an appraisal that a borrower has obtained will not be taken into consideration; and (2) the applicant may be charged for any additional copies of the appraisal report that are requested.

NAFCU appreciates the opportunity to comment on this proposed rule. If you have any questions or concerns, please feel free to contact me at (703) 842-2268 or ttefferi@nafcu.org.

Sincerely,



Tessema Tefferi
Regulatory Affairs Counsel