



December 23, 2009

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

Docket No. R-1367

Dear Ms. Johnson:

On behalf of the more than 35,000 members of our professional appraisal organizations, thank you for the opportunity to comment on the proposed rule addressing Truth in Lending and Home Equity Lines of Credit (HELOC). As professional real estate appraisers, members of our organizations support policies and principles that promote fairness and offer transparency in the marketplace.

By no longer requiring a professional appraisal before reducing or suspending a home equity line of credit, home owners and consumers would be deprived of access to their home's equity based on a valuation product such as an automated valuation model, tax assessment valuation, or broker price opinion that is typically much less reliable and accurate than an appraisal. BPOs, in particular, are generally produced by untrained and unqualified individuals with no responsibility to be unbiased in the development of such value estimates. Furthermore, many states have determined that BPOs can only be prepared in connection with a "listing" of a property for sale and thus have effectively banned BPOs for mortgage transaction purposes. We believe your Rule should reflect this reality and ban the use of BPOs in mortgage related transactions, including equity loans adjustments.

The Administration proposed stripping the federal bank regulatory agencies of their rulemaking authority relative to consumer protection in financial transactions. The Administration recognized a significant shortcoming with the current federal financial regulatory structure regarding consumer protection, citing the need to "make sure that consumer protection regulations are written fairly and enforced vigorously." Consequently, the Administration is calling for establishment of a new Consumer Financial Protection Agency (CFPA). Further, the House of Representatives favorably approved legislation earlier this month to establish the new CFPA and assign it with the consumer protection responsibilities of the Federal Reserve.

After a review of the appraisal related provisions of the proposed rule, we have no doubt that the CFPA would view this issue differently than the Federal Reserve. Given the Administration's proposal and the current activity in the 111<sup>th</sup> Congress, we respectfully request the Federal Reserve suspend this proposed rulemaking.

In fact, as it relates to the appraisal provisions, the proposed rule does not appear to be consistent with the Truth in Lending Act (TILA). The statutory language of TILA itself provides that a creditor may reduce or suspend a HELOC *"during any period in which the value of the consumer's principal dwelling which secures any outstanding balance is significantly less than the original appraisal value of the dwelling."*<sup>1</sup> While other federal bank regulatory agency guidance may allow other circumstance, this consumer protection regulation should not be inconsistent with the statute. By

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<sup>1</sup> 15 U.S.C. §1647

referencing “appraisal value,” Congress suggests an actual appraisal is required. Further, there is significant case law that demands regulations not be inconsistent with the language of the statute.<sup>2</sup>

Should the Federal Reserve opt to proceed with a final rule notwithstanding the Administration’s proposal and its approval by the House, we strongly recommend changes to the Rule that, unlike the current proposal, would provide consumers with ample safeguards against arbitrary denials of access to credit. Specifically, we question the underlying decision to permit alternative valuation methods given the fact that appraisals are required under the Interagency Appraisal and Evaluation Guidelines where material changes in market conditions exist<sup>3</sup>. Perhaps the Federal Reserve is utilizing a secondary provision of what is unofficially termed “Exemption 7” to the Federal Reserve’s appraisal requirements relating to “no new monies conveyed,” however, the very nature of the HELOC suspension or adjustment begs for an updated or new appraisal.

The TILA rules allow for a suspension or reduction in credit limits if a “significant change” in value has occurred. We strongly believe the only consistently reliable way to determine if a significant change in value has occurred is to obtain a new appraisal. Not only is it prudent for the lender to undertake basic due diligence, but use of an appraisal will help enhance the credibility of the credit suspension or reduction. Because consumers will be impacted significantly by this proposal, such a decision should be based on the most credible information available.

Further, we question whether this proposal is consistent with existing appraisal regulations and guidelines. Specifically, the Federal Reserve appraisal regulation allows for the use of an “evaluation” under certain conditions, including an existing extension of credit “provided that: (i) there has been no obvious and material change in the market conditions or physical aspects of the property that threaten the adequacy of the institution’s real estate collateral protection after the transaction, even with the advancement of new monies....” The guidelines allow for the use of an evaluation in circumstances where no new monies have been conveyed. However, it is our understanding that an appraisal continues to be required if one of the three following conditions exist: A material change in market conditions, a material change in property conditions, or when new monies are advanced. This being the case, we believe the proposed rule violates the Federal Reserve’s current appraisal requirements as specified in the Interagency Guidelines.

Lastly, at a minimum, any Final Rule advanced by the Federal Reserve should be consistent in its treatment of appraisals. Current appraisal requirements allow appraisers to complete so-called “evaluations” that might compete with some of the valuation methods allowed under the proposed rule. Specifically, the Final Rule should cite the existing regulation, which states:

*Although not required, an institution may use state-certified or licensed appraisers to perform evaluations. Institutions should refer to USPAP Advisory Opinion 13 for guidance on appraisers performing evaluations of real property collateral.*<sup>4</sup>

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<sup>2</sup> *Ford Motor Credit Co. v. Milhollin*, 444, U.S. 555, 565 (1980)

<sup>3</sup> Under 94-54, The agencies’ appraisal regulations allow an institution to use an appropriate evaluation of the real estate rather than an appraisal when the transaction: 1) Has a value of \$250,000 or less; 2) Is a business loan of \$1,000,000 or less, and the transaction is not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment; or 3) Involves an existing extension of credit at the lending institution, provided that: (i) there has been no obvious and material change in the market conditions or physical aspects of the property that threaten the adequacy of the institution’s real estate collateral protection after the transaction, even with the advancement of new monies; or (ii) there is no advancement of new monies other than funds necessary to cover reasonable closing costs.

<sup>4</sup> From the Proposed Interagency Appraisal and Evaluation Guidelines, November 13, 2008. Available at <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20081113a1.pdf>

At a minimum, the rule should reflect that licensed and certified appraisers can complete “evaluations.” Such an acknowledgement would be “prudent,” and protect both lenders and consumers by using the highest quality valuation service available. Use of an objective, unbiased appraiser can help restore stability and confidence in the mortgage market.

Thank you in advance for the opportunity to comment on this important matter. HELOCs are an important line of credit for many consumers. It should be noted that a good portion of the capital used for small business start-ups and expansions has historically come from HELOCs. We urge reconsideration of this proposal in light of this and the reasons stated above.

Should you have any questions, please do not hesitate to contact Bill Garber, Director of Government Relations for the Appraisal Institute, at 202-292-5586 or [bgarber@appraisalinstitute.org](mailto:bgarber@appraisalinstitute.org), or Peter Barash, Government Relations Consultant, American Society of Appraisers at (202) 466-2221 or [peter@barashassociates.com](mailto:peter@barashassociates.com).

Sincerely,

Appraisal Institute  
American Society of Appraisers  
American Society of Farm Managers and Rural Appraisers  
National Association of Independent Fee Appraisers

Cc: The Honorable Barney Frank, Chairman, House Financial Services Committee  
The Honorable Christopher Dodd, Chairman, Senate Banking Committee  
The Honorable Spencer Bachus, Ranking Member, House Financial Services Committee  
The Honorable Richard Shelby, Ranking Member, Senate Banking Committee  
The Honorable Timothy Geithner, Secretary of the Treasury  
Mr. Seth Wheeler, Senior Advisor, U.S. Department of the Treasury