American Bankers Association
Building Success. Together.

Robert R. Davis
Executive Vice President
Mortgage Markets, Financial
Management & Public Policy
(202) 663-5588
RDavis@aba.com

October 15, 2012

Submitted via Regulations.gov

Ms. Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

Re: Docket No. CFPB-2012-0032; RIN 3170-AA26
ECOA Amendments Concerning Appraisals

Dear Ms. Jackson:

American Bankers Association (ABA)[1] appreciates the opportunity to comment on the proposed rulemaking by the Bureau of Consumer Financial Protection ("CFPB" or "Bureau") to amend Regulation B, which implements the Equal Credit Opportunity Act (ECOA), and the official interpretation to the regulation, which interprets the requirements of Regulation B.

The proposed revisions to Regulation B would implement an ECOA amendment concerning appraisals that was enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act" or "DFA"). In general, the proposed revisions would require creditors to provide free copies of all written appraisals and valuations developed in connection with an application for a loan to be secured by a first lien on a dwelling. The proposal also would require creditors to notify applicants in writing of the right to receive a copy of each written appraisal or valuation at no additional cost.

Overview and Summary of Arguments

ABA commends CFPB on this proposed rule. We believe the rule is well crafted and includes necessary safeguards that will assist banks in their compliance efforts. ABA's comments are summarized as follows—

- The requirement to provide free copies of all written appraisals and valuations to consumers should apply exclusively to transactions secured by dwellings that are attached to real property. This delineation follows Congressional intent to cover residential real property, and not RVs or other structures that are not attached to real property.
- ABA recommends that the Bureau adopt a general exclusion for temporary loans, such as construction and bridge loans.

[1] ABA represents banks of all sizes and charters and is the voice for the nation's $14 trillion banking industry and its two million employees. The majority of ABA's members are banks with less than $165 million in assets.

- The initial three-day notification required under § 1002.14(a)(2) should be part of, and follow the same timing as, the early RESPA-TILA disclosures being proposed separately to be provided three days after application.
- Only "final" appraisals should be required to be delivered to consumers; consumers would not be served by receiving valuation-related materials that are preliminary in nature.
- ABA requests that the Bureau clarify that the obligation to provide written appraisals and valuations would not arise in connection with a servicer's loss mitigation activities.
- ABA requests more clarity on how to handle certain situations involving denials of loan applications.
- ABA commends the Bureau for providing flexibility under a waiver provision, and believes such a rule will serve consumer interests by avoiding unnecessary delays.

ABA Comments

Dwelling

The Proposed Rule's requirements would cover first lien transactions on a dwelling. The proposal would define the term "dwelling" as a residential structure that contains one to four units whether or not that structure is attached to real property. The proposals further provides that the term "dwelling" includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home. (§ 1002.14(b)(2))

ABA believes that there is no useful or practical reason to extend the requirement to provide free copies of all written appraisals and valuations to dwellings that are secured exclusively by residential structures. As enacted, the statute appears intended to cover residential real property, not RVs or other structures that are not attached to real property.

As the preamble to the proposed rule acknowledges, the protections in Dodd-Frank were aimed at abuses that led to the cycles of unprecedented expansions and contractions in the mortgage market. Such abuses concerned real estate finance, not boats and/or recreational vehicles. Moreover, excluding boats and RV's from coverage would inject greater regulatory clarity and achieve substantial cost reductions in compliance.

Temporary Loans

ABA would strongly recommend that the Bureau adopt a general exclusion for temporary loans, such as construction and bridge loans. These transactions are inherently temporary or provisional, and they serve the purpose of facilitating a final and permanent long-term financing for the home. We note that there would be great operational difficulties in weighing down these temporary finance transactions with requirements that are of little value to the consumer. We note that most other mortgage-related regulations, particularly RESPA and TILA, make special accommodations for temporary loans, recognizing their impermanent and transient nature. The protections achieved by placing additional disclosure requirements in these transactions are of little practical value because the valuation that really matters to consumers in such instances is the one performed after the initial construction phase, or after the bridge financing achieves the

objective of allowing the consumer to advance with the longer-term project and financing involved in such circumstances. We note that if temporary loans are excluded, the final, long-term financing phase would still be fully subject to the requirements of this proposed rule.

Notification Requirements

The Proposed Rule would require creditors to notify applicants within three business days of receiving an application of their right to receive a copy of written appraisals and valuations developed in connection with an application for credit secured by a first-lien loan on a dwelling. (§ 1002.14(a)(2))

ABA believes that this notification should be part of, and follow the same timing as, the early RESPA-TILA disclosures proposed to be provided three days after application. Although the current proposal is under ECOA, we ask that the Bureau abide by the sound policies of simplifying all mortgage-related disclosures to ensure clarity and uniformity across all federally mandated forms. The three-day notification under § 1002.14(a)(2) should therefore follow the same timing requirements as the RESPA-TILA disclosures, and should be incorporated into that set of required informational material.

Provision of Written Appraisals

The proposal would require creditors to provide applicants a copy of all "written appraisals and valuations" promptly after receiving an appraisal or valuation. (§ 1002.14(a)) A "written" appraisal or valuation includes, without limitation, an appraisal or valuation received or developed by the creditor: in paper form (hard copy); electronically, such as by CD or e-mail; or by any other similar (electronic) media.

ABA would urge that the requirement to provide copies of written appraisals and valuations be better circumscribed to ensure that only "final" appraisals and valuations are subject to the rule. We are concerned that as currently crafted, § 1002.14(a) could apply to an array of valuation-related material that are just preliminary in nature. In a typical valuation process, there is work product and analysis that precedes the formal valuation report. Such work product is often preliminary and in draft form, and may not be fully reviewed by the lender. Moreover, the term "written appraisals and valuations" should exclude mere communications among bank staff concerning the assignment of value to property. Such early "draft" reports should not be required to be presented to the consumer—this is not what the statute intends.

We think that adding the word "final" before the term "written appraisals and valuations" in proposed § 1002.14(a) would achieve this objective. Likewise, in the examples listed under proposed Commentary 14(b)(3)-1, the illustrations should refer to "final" reports, documents, values, and/or opinions, as applicable, to ensure that there is no confusion that these elements must constitute the final and formal versions of the valuation. The Bureau may also consider an explicit statement that "internal and routine" bank staff communications are *not* covered under this rule.

Loss Mitigation

As set forth above, proposed § 1002.14(a) requires delivery of written appraisals and valuations developed "in connection with an application for credit… "prior to, or at the loan's consummation. According to proposed Commentary 14(a)(1), the requirement applies to renewals of an existing extension of credit, if a new valuation or appraisal is developed. ABA would request that the Bureau clarify that the obligation to provide written appraisals and valuations would not arise in connection with a servicer's loss mitigation activities, as the valuation information would not be in furtherance of a loan's consummation.

Denied Applications

In § 1002.14(a)(4) of the Proposed Rule, a creditor would be required to provide a copy of an appraisal or valuation promptly, even if the application is denied, incomplete, withdrawn, or the applicant waives the three day requirement.

ABA would request more clarity on how to handle two situations pursuant to this proposed rule—

- Instances where a loan application is denied and there is no appraisal. (In such circumstances, ABA believes the creditor would not be required to provide a copy of the appraisal to the consumer.)
- Instances where a loan application is denied, but the consumer has not paid for the appraisal. (In such circumstances, ABA believes the lender may be required to provide the copy of the appraisal, but under a relaxed time schedule. In these instances, the Bureau must permit that creditors require reimbursement for the appraisal before it is obligated to deliver the copy of the appraisal to the consumer.)

Waiver Provisions

The Proposed Rule provides that applicants are permitted to waive the timing requirement to receive copies three days prior to consummation. In such instances, applicants would still be given a copy of all written appraisals and valuations at or prior to closing. An applicant's waiver is effective under § 1002.14(a)(1) if the applicant provides the creditor an affirmative oral or written statement waiving the 3-day timing requirement.

ABA commends the Bureau for the flexibility provided by this waiver provision. We believe this flexibility will translate to consumer benefit in instances involving delays outside of the lender's control that can damagingly, and unnecessarily, postpone closings. ABA observes that this requirement will spur secondary market guidelines that ensure full compliance with the law, and therefore creditors will likely be required to execute only written and signed waivers. We therefore urge that the Bureau retain the waiver provision to afford the flexibility built into the proposed rule. As written, the consumer would always receive the appraisal at the settlement table, at the latest point, and the flexibility afforded under this rule would not erode any degree of consumer protection.

Conclusion

ABA appreciates the opportunity to comment on this very important rulemaking. Should you have any questions regarding ABA's comments, please contact the undersigned or Rod J. Alba, at Ralba@aba.com.

Sincerely,

Robert R. Davis