HOUSING POLICY COUNCIL
THE FINANCIAL SERVICES ROUNDTABLE

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October 4, 2010

Ms. Sandra F. Braunstein
Director
Division of Consumer and Community Affairs
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20051

Ms. Kathleen Ryan
Senior Counsel, Consumer Credit
Division of Consumer and Community Affairs
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20051

Re: Interim Final Regulation on Appraiser Independence

Dear Ms. Braunstein and Ms. Ryan:

The Housing Policy Council supports the efforts of Congress and the Board of Governors to assure appraisal independence. It recognizes that the Board is directed to promulgate regulations promptly under the Dodd Frank Act that define acts or practices that violate appraiser independence, and we support that.

At the same time, we do not believe that the Board is required to proceed so promptly on other provisions of Section 1472, and do believe that there are good reasons to proceed more systematically with respect to the question of what is a reasonable and customary fee for an appraisal.

<u>"Customary and reasonable" fees are not an "appraisal independence" provision requiring interim final rules within the 90 day time frame.</u>

HPC believes that the "customary and reasonable" provision should not be adopted as part of the 90 day interim final rule, but should be subjected to a separate, formal rule making process. The "customary and reasonable fees" requirement is not an act or practice that violates appraisal independence. Its location in the section itself suggests that it is a separate issue and should be subject to separate consideration. Only those issues directly related to acts and practices that violate appraisal independence were intended to be included within the 90 day rule making mandate.

<u>The complexity of the issues surrounding the compensation of appraisers requires separate rulemaking, with a full public notice and comment period.</u>

Violating the "customary and reasonable fee" requirement would subject violators to severe penalties, so care must be taken in defining that term. The best information describing present fees should be collected, and analyzed and since data does not currently exist but must be created, that collection and analysis cannot be completed in a 90-day interim final rule proceeding. There are no authoritative surveys available to gauge what constitutes a "customary and reasonable fee" across the country.

The industry is engaged in utilizing a well-constructed survey to develop an authoritative data base, but unfortunately, such a database cannot be created, analyzed and published prior to the October 19, 2010 effective date for the interim final rule. Use of anything other than data that comes from a survey similar to what the industry is compiling, and which has been described in greater detail by other industry members submitting comments on this rule, creates a serious concern. Appraisers' fees will not be based on the existing market price for appraisers, but instead will be set at a level that is a government-induced subsidization of appraisers. Such a result is not mandated by statute, it is unfair to other participants in the system, and unnecessary because access to appropriate data need only await the completion of the surveys that we have referenced.

Finally, given the lack of definition and lack of authoritative comprehensive data, and also given the existence of a myriad of contractual arrangements and technical systems currently in place, a lengthy transition period is essential once the question of what a reasonable and customary fee is determined.

We urge the Board of Governors to remove the appraisal fee provision from the pending interim final rule, and create a new, separate rulemaking, with opportunity for full comment and the development of good data on what constitutes "reasonable and customary fees."

Request for Board to confirm that lenders may continue to order appraisal services from affiliated appraisal management companies.

With the addition of the words "no appraisal management company," new TILA Section 129E(d), entitled "Prohibitions on Conflict of Interest," appears to modify the existing and accepted conflict of interest standard, which could be too broadly construed to prohibit a mortgage lender from obtaining appraisal services from an affiliated appraisal management company – something that is currently permitted, provided the HVCC restrictions on affiliations are followed. New Section 129E(d), within Section 1472, specifically provides:

> No certified or licensed appraiser conducting, and no appraisal management company procuring or facilitating, an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer may have a direct or indirect interest, financial or otherwise, in the property or transaction involving the appraisal. (emphasis added)

While it does not seem likely that Congress intended to modify the accepted appraiser conflict of interest standard or the related HVCC rules/restrictions on affiliations, the appraisal industry (particularly, those lenders with affiliated AMCs) would like the Board to confirm in its interim final rules on appraiser independence that the above prohibition on "indirect interest" would not prevent lender-owned or -affiliated AMCs and their staff and fee appraisers from performing appraisals for their affiliated lenders. More specifically, we urge the Board to confirm that an AMC affiliate of a national bank/lender does not have a direct or indirect interest in the property or credit transaction merely as a result of its common ownership. In addition, we respectfully ask the Board to confirm that lenders wishing to sell their real estate owned (REO) properties may continue to engage affiliated appraisal management companies to provide appraisal services, so long as the AMCs comply with delineated appraisal independence requirements, such as the upcoming version of the HVCC.

A safe harbor/confidentiality privilege would facilitate responsible reporting under new TILA Section 129E(e).

New TILA Section 129E(e) requires persons involved in a real estate transaction involving an appraisal for a consumer credit transaction to report any appraiser who is failing to comply with USPAP or is violating applicable law or "otherwise engaging in unethical or unprofessional conduct." In addition to TILA liability exposure for not reporting, the reporting person may be exposed to liability for defamation, especially if the unethical or unprofessional conduct reported is "borderline" (and requires a judgment call). We urge the Board of Governors to consider whether a safe harbor/confidentiality privilege (and protection from discovery under the State's Freedom of Information Act) might facilitate responsible reporting by the persons involved in a real estate transaction and reduce liability for defamation claims.

Thank you for considering our input on the interim final rule on appraisal independence. If you need any additional information, please call me or Paul Leonard at (202) 289-4322.

With best wishes,

John H. Dalton

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