

September 7th, 2010

Chairman Benjamin S. Bernanke
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue Northwest
Washington, DC 20551

The Honorable Christopher J. Dodd
Chairman
Banking, Housing and Urban Affairs Committee
United States Senate
Washington, DC 20510

The Honorable Barney Frank
Chairman
Financial Services Committee
United States House of Representatives
Washington, DC 20515

Re: Interim Final Regulations Implementing Section 129 E of the Truth in Lending Act.

Dear Chairman Bernanke, Senator Dodd and Representative Frank,

My name is Joseph Lorinc. I am a State Certified General Residential Real Estate Appraiser licensed by and working in the State of Florida. I work for Neapolitan Appraisal, Inc. in Southwest Florida providing residential real estate appraisals. I was originally licensed in 1993 and have 13 years of residential and non-residential appraisal experience.

I am writing this letter to urge the Federal Reserve Board to move forward with the implementation of the appraisal independence and appraisal fee provisions in Title XIV of the Dodd-Frank Act.

Title XIV (Section 1400 et seq) of the Dodd-Frank Act contains the “Mortgage Reform and Anti-Predatory Lending Act,” which includes Subtitle F – Appraisal Activities. Section 1472 of the “Mortgage Reform and Anti-Predatory Lending Act” adds Section 129 E to the Truth in Lending Act which will establish minimum federal appraisal independence requirements and customary and reasonable fee requirements.

Effective Date of Appraisal Requirements

The enacting language of the Dodd-Frank Act states that the appraisal requirements should be adopted in the Interim Final Regulations. As an appraiser, I believe it is vitally important that there should be no delay in implementation of the appraisal independence requirements under Title XIV of the Dodd-Frank

Act. As part of the Dodd-Frank Act, Section 4312 (b) (2) also requires that lenders and their agents compensate appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised.

As defined in the Uniform Standards of Professional Appraisal Practice, 2010-2011 Edition by the Appraisal Standards Board of The Appraisal Foundation, valuation services are “services pertaining to aspects of property value,” an appraiser is “one who is expected to perform valuation services competently and in a manner that is independent, impartial and objective,” an assignment is “an agreement between an appraiser and a client to provide a valuation service or the valuation service that is provided as a consequence of such an agreement,” an appraisal is “the act or process of developing an opinion of value” and appraisal practice is defined as “valuation services performed by an individual acting as an appraiser, including but not limited to appraisal, appraisal review or appraisal consulting.” Appraisal services are valuation services provided by an appraiser as the result of an assignment. Under Section 4312 (b) (2), customary and reasonable fees must be paid to for appraisal services for residential loan purposes. There is no mention of specific appraisal products, rather the Dodd-Frank Act specifies appraisal services for residential loan purposes, covering any valuation services provided by an appraiser.

Customary and Reasonable Fees and Appraisal Management Companies

Customary and reasonable fees for appraisal services are available from a number of sources. Several companies have existing fee data surveys available, such as the Appraisal Fee Reference published by a la mode, inc. Over the past month since the passage of the Dodd-Frank Act, I have received invitations to participate in several other fee surveys from a variety of companies in the appraisal, appraisal management and banking fields.

As Section 4312 of the Dodd-Frank bill is intended to promulgate appraisal independence requirements for residential loan purposes, I believe the most obvious source of customary and reasonable fees is being overlooked. In every residential mortgage transaction, a HUD-1 Form detailing fees (including appraisal fees) associated with the origination of a residential mortgage loan is required. The data on the HUD-1 Form could be used to determine the customary and reasonable fees that consumers have been charged for appraisal services. The HUD-1 data would provide an accurate and unbiased basis for determining the customary and reasonable fees that consumers are paying for appraisal services for residential loan purposes.

In its AMCs/Reasonable and Customary Fees/Turnaround Time FAQs HUD clarified what it believes to constitute a customary and reasonable fee: “FHA believes that the marketplace best determines what is reasonable and customary in terms of fees. The fee is the result of a business decision, which may or may not be negotiated, between the appraiser and the client. FHA does not set fees or determine whether a fee is reasonable or customary. Lenders are expected to know what is reasonable and customary in the areas in which they lend and are expected to ensure that the fees paid by consumers for both the appraisal and the management of the appraisal process are reasonable and customary.” This statement appears to indicated HUD’s reliance on the free market system in determining fees.

Since the introduction of the Home Valuation Code of Conduct in March of 2008, appraisal management companies participation in the market has grown from 15% of appraisals ordered to an estimated 80%

today. While HUD's stance on the importance of the free market system is not in question, the current situation in the appraisal industry has little resemblance to a free market. Appraisal fees are no longer negotiated between the client and the appraiser, they are dictated to the appraiser by the appraisal management company. The Dodd-Frank Act seems to recognize this fact in Title XIV, Section 129 E (i) (1) "In General – Lenders and their agents shall compensate appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised. Evidence for such fees may be established by objective third-party information, such as government agency fee schedules, academic studies and independent private sector surveys. Fee studies shall exclude assignments offered by known appraisal management companies." By specifically excluding fees offered by appraisal management companies, the writers of these regulations seem to be acknowledging the undue influence that the appraisal management companies have had on the appraisal industry.

In March of 2008, the Home Valuation Code of Conduct was introduced to curb the banking industries pressure on independent appraisers to produce appraisal reports that met their lending needs instead of reflecting the true market value of the properties being appraised. This practice by the banking industry resulted in many inaccurate appraisal reports being produced and then used as justification to finance residential mortgage loans. The unethical behavior of the banking industry and the appraisers who wrote appraisal reports they knew to be inaccurate contributed in a significant way to the collapse of the housing market in which we currently find ourselves. Unfortunately, the Home Valuation Code of Conduct had the unintended consequence of producing a business climate where appraisal management companies have come to dominate the appraisal services market for residential lending. Under the appraisal management company business model, appraisal assignments are *shopped* to the appraiser that will accept the lowest fee and promise the shortest completion time. Little to no regard to the complexity of the assignment or the competency of the appraiser to complete the appraisal assignment is given. To receive orders from an appraisal management company, appraisers are forced to complete appraisal assignments requiring an ever increasing amount of information gathering, analysis and reporting mandated by Government-Sponsored Enterprises (Federal National Mortgage Association [Fannie Mae], Federal Home Loan Mortgage Corporation [Freddie Mac]), the appraisal management companies and finally the client, in an unrealistically short timeframe for substantially reduced fees. Though it was written to improve the quality of appraisal services, the unintended results of the Home Valuation Code of Conduct have been the same, an increasing number of inaccurate reports are being produced by unqualified appraisers. In time, this may lead to yet another collapse of the housing market.

Section 4312 of the Dodd-Frank Act was intended to re-establish a business environment where appraiser independence can be maintained. In the midst of the current housing crisis, delaying the implementation of this vital legislation could have a devastating and far reaching impact on not only the housing market but the overall economy of the United States.

Scope of Work, Appraisal Assignments and the Appraisal Report

The scope of work for an appraisal assignment for a residential mortgage loan is influenced not only by the requirements of the Uniform Standards of Professional Appraisal Practice but also by additional underwriting requirements from Government-Sponsored Enterprises (Federal National Mortgage Association [Fannie Mae], Federal Home Loan Mortgage Corporation [Freddie Mac]), the appraisal management companies and the client. "Customary and reasonable" assignment conditions should be subject to a "customary and reasonable" fee. As additional information gathering, analysis and reporting requirements are made part of the appraisal assignment, such as completion of the 1004 Market Conditions Addendum for Fannie Mae, lender requirements to include additional sales in declining markets, requirements for the inclusion of comparable active listings, inclusion of aerial photography of the subject property and market area and inclusion of raw data from the local Board of Realtors on recent

sales in the neighborhood whether such sales are part of the appraisal report or not, one would expect an increase in fees in a free market system. However, since the introduction of the Home Valuation Code of Conduct in March of 2008 and the subsequent domination of the appraisal services market by appraisal management companies, all of the items mentioned above have been demanded of appraisers while the fees for appraisal services including all the new requirements have been reduced by 50% or more as compared to pre-Home Valuation Code of Conduct levels.

Range of Products Covered

Section 4312 (a) of the Dodd-Frank Act specifically states that the rules are to be promulgated for appraisal independence requirements for residential loan purposes. While this represents a narrow field of appraisal services, the recent crisis in the housing market underscores the importance of this sector of the economy to the overall economic health of the United States. Any efforts to delay the implementation of the regulations restoring appraisal independence to this vital sector of the economy must not be allowed to happen.

Fee Discounting

In the current market, discounted fees are not negotiated in good faith between the client, appraisal management company and appraiser. Under the current business model, appraisers who will not accept the discounted appraisal fee mandated by the appraisal management company are summarily excluded from receiving appraisal assignments. Discounted fees, not the competency of an appraiser to complete the appraisal assignment, is the primary determining factor in the selection of an appraiser by most appraisal management companies. According to Freddie Mac Bulletin 2009-18, “lenders and appraisal management companies should select the appraiser on their panel that is the most qualified and competent to complete the specific assignment. Appraiser’s must be familiar with the local market in which the property is located, must be competent to appraise the subject property and must have access to the data sources necessary to develop a credible appraisal.” Under the current appraisal management company business model, this simply does not happen, as appraisal assignment are placed with the appraiser willing to accept the lowest fee regardless of qualifications or competency.

Appraiser Trainees

Some appraisal management companies have expressed concern that the regulations requiring customary and reasonable fees for appraisal services will create a preponderance of “experienced appraisers” and therefore limit the opportunities for appraiser trainee development. Currently, appraiser trainees are prohibited from performing any work on appraisal assignment made by the majority of appraisal management companies. If there has been any limiting of opportunities for appraiser trainee development, it has been caused directly by the exclusion of appraiser trainees at the instruction of the appraisal management companies or indirectly by the reduction of fees for appraisal services to such a point that it is no longer economically viable to maintain an appraiser trainee/appraiser supervisor relationship.

Customary and Reasonable Fees for Appraisal Services

Concerns have been raised that by requiring that appraisers be paid a customary and reasonable fee that the cost of appraisal services will be higher than many consumers would expect to pay in a retail mortgage transaction. In the market that I serve, consumers regularly pay \$500 or more for a typical residential appraisal. On the consumers HUD-1 closing statement, this fee is listed on line 405 as an appraisal fee. The vast majority of consumers are unaware that the fee reported on their HUD-1 closing statement is not the fee paid to the appraiser, but is the fee paid to their lender, who keeps a portion of the fee for “administrative” costs. The lender then pays the appraisal management company, who also takes a portion of the fee. For a typical appraisal assignment, the appraiser is left with \$175 to \$200 of the original appraisal fee. Because of this practice, several states have enacted legislation requiring that the portion of the appraisal fee that is paid to the appraiser and the portion of the appraisal fee that is kept by

the lender and appraisal management company be listed separately. While this does create more transparency in the appraisal process, it does nothing to address the larger problem of undue influence by the appraisal management company over the fees paid to appraiser for their services.

Conclusion

The final implementation of the regulations to promulgate appraisal independence for residential loan purposes are a significant and vitally important step in the restoration of public confidence in the housing market. Any delay in the implementation of these regulations can only result in continuing damage to the appraisal industry, the mortgage lending industry and the health of the United States' economy.

Data to determine "customary and reasonable" fees for appraisal services related to residential loan purposes is readily available from a number of sources. In addition to surveys provided by government agencies, appraisal industry companies, mortgage industry companies and independent third-party companies, appraisal fees are required to be reported on the HUD-1 form for every residential mortgage loan origination.

As an appraiser, the Home Valuation Code of Conduct and the forthcoming Final Interim Rules promulgated under the Dodd-Frank Act affect my business and my profession on an ongoing and daily basis. I would be honored to discuss any questions you may have or provide any additional information you may desire to assist in your deliberations and promulgation of the Final Interim Rules.

Thank you for your time and consideration.

Sincerely,



Joseph E. Lorinc

cc: Dave Biggers
 Brian J. Davis
 Joan N. Trice