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Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve
210th Street and Constitution Ave., N.W.
Washington, D.C. 20551

Re: Docket No. R-1394: Proposed Requirements for Appraisal Independence

We represent an independent, privately owned and operated real estate appraisal company (not owned, operated or controlled by any lending institution or Appraisal Management Company) that has provided highly regarded appraisal services in urban and densely populated suburban areas of New York State and elsewhere in the northeast region for more than 25 years. Its business model has been essentially the same for the duration of its existence – establishing independent relationships with lending banks and more recently with Appraisal Management Companies to appraise residential properties serving as collateral for loans, and eliciting the services of 25 to 50 independent appraisers in any given year to provide services on an as needed basis, while employing only one to three appraisers full time. The independent appraisers also are free to work for other appraisal companies, of which there are many in the markets in which the company operates.

For the reasons discussed below, we urge you to revise the definition of an Appraisal Management Company (AMC): 1) to eliminate from its coverage independent appraisal companies who rely on the services of 50 or fewer independent appraisers in any one state (or 75 appraisers in a region of four or fewer states); we believe these numbers are suitable for appraisal companies such as our client that operate in urban and densely populated suburban areas; in rural and less densely populated areas, lower numbers, perhaps those included in the proposed rule, no doubt would be just as effective; 2) to include in that count only those appraisers who perform 300 or more appraisals for the independent appraisal company, thus devoting half or more of their time to that company; again, this number would be suitable for metropolitan area appraisers, while a lower number for rural areas presumably would be just

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as effective; and 3) perhaps in the alternative, to exclude from the AMC definition those independent appraisal companies that have been in business for 10 years or longer in a market (whether metropolitan or rural) where objective criteria confirms there is adequate competition to allow such a company to continue to operate without the added burden of paying its independent appraisers the "reasonable and customary" fees the proposed rules require.

As these recommendations indicate, our greatest concern with the proposed rules is that they do not appear to recognize the distinction between a small or modest-sized appraisal company like our client that only provides independent appraisal services in local and regional markets and depends on a relatively small number of independent individual appraisers to do so, versus an AMC that typically offers a bundle of services to lending institutions nation-wide, which go far beyond appraisal services (such as title services, credit services, and insurance products, as well as other benefits), typically employs or retains the services of ten thousand or more appraisers throughout the country, and thus has an influence over the real estate financing market that enables it to dictate appraisal fees and the quality of the appraisals.

An appraisal company such as our client, that operates on a local level, offers only appraisal services, relies on fewer than 50 appraisers on a regular basis, and is retained by AMCs and lending institutions to do appraisals, simply should not be swept into the category of AMCs by a definition that does not adequately distinguish an AMC from an independent appraisal company. An independent appraisal company such as our client does not create the threat to appraiser independence that an AMC or lending institution represents; it does not and can not compete with AMCs, in fact it provides services to AMCs; and it might very well be put out of business or be bought out by an AMC if it were put in that category and forced to compete with AMCs as a result of a poorly drawn definition.

An independent appraisal company such as the one we represent is on the front line of the independent appraisers the law is seeking to protect in the interest of preserving the integrity of appraisals against the onslaught of lending institutions and AMCs. While our client typically relies on the services of 25 to 50 appraisers throughout the year to varying degrees, with some performing as many as 300 appraisals in a good year and others only 20% of that amount, AMCs typically are served by ten thousand or more appraisers who collectively perform literally hundreds of thousands of appraisals each year. AMCs control the market place and are in a position not only to unduly influence fees, but also to unduly influence the integrity of an appraisal.

A company such as our client, while it does not compete with AMCs, is well-organized and so specialized to do appraisal work, with a long track record of reliable and professional service, that it is able to withstand outside pressure that would diminish the reliability of its service or the quality of

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the appraisals it provides. It is small companies like our client that are the ones to be protected by the rules to ensure it is paid appropriate fees it earns and deserves – presumably the reasonable and customary fees banks and AMCs would have to pay under the rules. This then would enable it to pay the individual appraisers the portion of those fees each of them earns and deserves, taking into consideration the favorable independent circumstances in which they work. In other words, independent appraisal companies such as our client and its appraisers should be the beneficiaries of the protection the rules intend to provide, not be punished by the obligations it seeks to impose on AMCs.

The individual independent appraisers that have provided services to our client are paid fees for their services in amounts that are without a doubt fair and reasonable, especially when taking into consideration the mutually beneficial arrangements under which they work cooperatively together. The appraisers are freed of the overhead, administrative and marketing costs they would incur if they were to set up their own appraisal services, and their level of activity is dictated by the level of activity in the marketplace. Typically, individual appraisers are independent by choice, and most would rather not be hired as an employee and lose the benefits they find so attractive in being independent. As at-will employees (if the company were left with no real choice but to hire the appraisers as employees), they not only would lose their independent appraiser status, but also, as a W-2 employee, would be subject to termination any time there were to be a down-turn in the marketplace. In that instance, it is not likely they would be asked to provide appraisal services on an independent basis, and they would remain unemployed until the market gained enough strength to enable the appraisal company to hire again. In the meantime, the company would incur greater overhead and administrative expenses while the appraisers were on staff, and be burdened with much of that cost when it has laid off appraisers in a down-turn. Ultimately, this would weaken the independent appraisal companies and create a situation where they might have to choose between going out of business and being bought out by an AMC that now may have the incentive to make such a purchase. In either reasonably foreseeable scenario, all independence would be lost.

It would be shameful if the proposed regulations had the unintended consequence of not only materially altering the business model of company's like our client and disrupting its effective delivery of services, but also putting it at risk of being bought out by an AMC or going out of business. Such a reputable appraisal company, and no doubt many other such companies throughout the country, deserves to continue in operation unimpeded by solutions designed to address a problem to which they did not contribute. We believe this can be achieved by a more carefully drawn definition of an AMC.

It appears the definition of an AMC is the principal means by which the Federal Reserve Board draws appraisers under what is supposed to be a protective umbrella designed to preserve their independence and thus the

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integrity of the real estate financing industry. Since there are, however, a number of modest-sized appraisal companies such as our client that are themselves independent, that rely on independent individual appraisers to provide service on an as-needed basis, and that are not owned by the lending banks, mortgage companies or AMCs and instead provide independent appraisal services to them, it is critical to their survival that the definition of an AMC be properly drawn. Our client and other independent appraisal companies like it does not seek to impose any undue pressure on the independent individual appraisers just as they themselves have created a business model that provides them some ability to deflect and avoid any such pressure being put on them. The independent appraisal companies and the individual appraisers each looks to earn an appropriate fee based upon their respective roles in the appraisal process. So long as the appraisal company does not so dominate its market, as an AMC might, that there is no competition and thus no freedom for the independent individual appraisers to serve other companies, there is little risk of infringement on the independence of the appraisers.

We thus urge you to consider the following proposed modifications to the definition of an AMC so that modest-sized, specialized, independent appraisal companies such as our client survive the effort to address the problems in the real estate financing market – because they are not part of the problem, they are one of the strengths:

1. Include an exemption from the regulatory requirements, perhaps in the form of an exclusion from the AMC definition, for any real estate appraisal company that has been in business in essentially the same form for a period of then (10) years or more and is not owned by a lending institution or AMC, perhaps conditioned on a determination, based upon objective criteria, that there is adequate competition in the geographic area in which the company operates to ensure the independence of the individual appraisers.
2. Increase the number of independent appraisers that must be overseen by an appraisal company in order to fall within the definition of an AMC, raising the number to perhaps 50 appraisers within a single state, and 75 appraisers in total in no more than four contiguous states, provided, again, the appraisal company is not owned by a lending institution or AMC. (Again, we believe these threshold numbers are appropriate with respect to appraisal companies operating in urban and densely populated suburban areas. In less densely populated areas, a lower threshold number of appraisers to have an appraisal company be deemed an AMC, perhaps even the numbers included in the proposed rule, presumably would be as effective in achieving the balance we would seek to achieve.) This would exempt the small to modest sized independent companies that do not infringe on the

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independence of the individual appraisers whose services they elicit. (It appears to be understood, but it would be helpful to clarify, especially if the definition of an AMC is not modified, that the number of appraisers that must be overseen in order for a company to fall within the definition of an AMC refers to the number of independent appraisers, and does not include the number of appraisers carried as employees of the company.)

3. With respect to identifying the appraisers "overseen" by an appraisal company to determine whether the company is an AMC, we urge adoption of the following criteria: an independent appraiser is deemed to be overseen by an appraisal company when the appraiser performs greater than 300 appraisals in a calendar year for that appraisal company, which would be indicative that the appraiser works half or more of his or her time for that company. (Again, the number we propose is appropriate for appraisers working in a metropolitan area. A smaller number no doubt would be appropriate in rural areas.)
4. Finally, if independent appraisal companies such as our client are not to be excluded from the AMC definition, adopt a means for them to comply with the rules by demonstrating the fees they pay to independent appraisers are acceptable based upon their own historical practices, provided, for example, the company has been in existence for at least ten (10) years and is not owned and never has been owned by a lending institution or AMC, and provided further that there is adequate competition in the relevant geographic area, as determined by objectively measurable criteria.

We believe independent individual appraisers and the independent appraisal companies that rely on them provide the most reliable and effective approach to preserving the integrity of the appraisal process. It is a model that should be recognized by the rules, not weakened by including such independent appraisal companies within the AMC definition.

Our client would be willing to discuss its concerns with you directly at any mutually agreeable time.

Thank you for your consideration.

Respectfully submitted,


Walter A. Kretz, Jr.