12/9/2010

FEDERAL RESERVE SYSTEM
12 CFR Part 226
Regulation Z; Docket No. R-1394
RIN AD-7100-56
Truth in Lending
TO AGENCY: Board of Governors of the Federal Reserve System.
FROM: Bryan Muldoon Certified Residential Appraiser Member (AFI)
ACTION: Response to Interim Final Rule; Response to request for public comment.

SUMMARY: Independent Fee Appraisers is submitting, as requested, comments in response to the Board's publishing for public comment an interim final rule amending Regulation Z (Truth in Lending).

The Board's interim rule implements Section 129E of the Truth in Lending Act (TILA), which was enacted on July 21, 2010, as Section 4173 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. TILA Section 129E establishes new requirements for appraisal independence for consumer credit transactions secured by the consumer's principal dwelling.

Independent Fee Appraisers (IFA) is concerned that, while the above summary regarding Appraiser Independence is accurate, it is interpreted or misconstrued in the practices and development of rules defined in the detailed analysis later in the Interim Final Rule. Independent Fee Appraisers recognize parts of the Interim Final Rule regarding Appraiser Independence overlap. This creates further discussion which arguably renders the Interim Final Rule inconsistent with it's summary.

Independent Fee Appraisers recognize and appreciates the Board's strong view on the need for Appraiser Independence and the necessary inclusion of TILA and RESPA during their consideration of the Interim Final Rule. Mandating Control over Appraisers via salary control and forced fee acceptance is not only unethical and damaging to the process but also negates the intended effect of the bill. Unintended consequences will assuredly arise as it did with the HVCC, it is the Boards responsibility not only learn from the damage the HVCC has created, whether intentional or unintentional, but to correct and avoid this catastrophe in the future. Please understand the goal of 3rd parties lobbying to gain control over Appraiser fees is purely motivated by money and greed and not for the overall good of the process.

Responding to the Board's published position on Section 1473, Subtitle F assume the Board agrees on the following:

1. Appraisers are not mandated to pay any third party fees in whole or in part in association with an Appraisal.

> A) The Board recognizes that any fees or costs to an individual or third party required, or not required by the lender for valuation management functions or settlement services or any other service required, or not required, by the Lender shall be negotiated between the lender and the individual or third party. (The Board recognizes that it is NOT the responsibility of the Appraiser to pay for AMC or third party fees)

2. Consumers are not tricked or trapped and charges to the Consumer are transparent.

The Board recognizes that transparency to the Consumer is not only mandated by TILA and RESPA but required as stated in the Board's summary. Any additional fees or costs to an individual or third party required, or not required, by the lender must be disclosed to the Consumer.

3. Real estate appraisals used to support creditor's underwriting decisions are based on the appraiser's independent professional judgment, free of any influence or pressure that may be exerted by parties that have an interest in the transaction.

The Board recognizes the importance of Appraiser Independence as it relates specifically to Section 226.42 in that the control of compensation in part, or in whole, to an Appraiser constitutes coercion as stated in 226.42(c)(1)(i)(E)

4. To ensure that creditors and their agents pay the customary and reasonable fee to appraisers.

A) The Board recognizes creditors and their agents that pay the customary and reasonable fee to appraisers will eliminate the need for overlap and strengthen Appraiser Independence in regard to coercion, extortion, inducement, bribery, or intimidation of, compensation or instruction to, or collusion

B) The Board recognizes, as stated, ["*The Board interprets the statutory language of TILA Section 129E(i) to signify that the marketplace should be the primary determiner of the value of appraisal services, and hence the customary and reasonable rate of compensation for fee appraisers."]* that the customary and reasonable fee charged to and paid for the performance of an Appraisal will be paid to the Appraiser in whole and not retained by any individual or third party required or not required by the lender for valuation management functions or settlement services or any other service required or not required by the Lender.

The so called '*recent rate*' is a term developed as a result of the HVCC and the Board needs to recognize that the wholesale market created by the HVCC is not the actual market as AMC's are not part of the market place, nor do they purchase Appraisals, nor do they perform or purchase Appraisal services. They are merely taking a cut of the customary and reasonable fee from the Appraiser on behalf of the lender for Appraisal services performed by the Appraiser.

It is the concern of Independent Fee Appraisers that the board is not only creating a NEW marketplace but mandating this marketplace between Appraisers and 3rd party companies. Surely the goal of the board is to avoid overcharges to the consumer and to prevent any coercion by allowing 3rd party companies to take the Appraisal fee away from Appraisers. If the goal of the Board is to otherwise enrich 3rd party companies on the backs of Appraisers, please be clear and specific.

In short, The Appraisal fee that MUST be paid to the Appraiser for the performance of the Appraisal is the Customary & Reasonable fee paid by the Consumer.

This is in line with the boards recognition of Section 226.42(f)(4)(iii) defines an “appraisal management company” in § 226.42(f) as any person authorized to do the following actions on behalf of the creditor…. The fee for the performance of an Appraisal paid by the Consumer is the fee paid to the Appraiser for the performance of that Appraisal. This is also in line with the boards belief that the Appraiser is not responsible for nor mandated to pay the AMC or third party fee, as stated above, the AMC is hired by the lender and acts on behalf of the lender. Independent Fee Appraisers respectfully request as well as demand the clarification on this issue.

The following statement is further evidence that the board, Dodd Frank, HUD, TILA & RESPA agree Title 14 does not recognize any wholesale market created by or currently being used by AMC or Third Parties.

TILA Section 129E(i)(1). The statute states that evidence for reasonable and customary fees may be established by objective third-party information, such as government agency fee schedules, academic studies, and independent private sector surveys. “Such fee studies,” the statute stipulates, “shall not include assignments ordered by known appraisal management companies.”—(

We respectfully ask as well as demand the board clarify this definitively. We know the board, Dodd-Frank Wall Street Reform and Consumer Protection Act, HUD/FHA, TILA and RESPA are attempting to ensure the bank/lender or it's subsidiaries or agents can NOT 'steal', 'retain' or 'dip into' the Appraisal Fee paid by the Consumer. If the Appraiser performs the Appraisal, the Appraiser MUST be paid for those services.

Presumptions 1 and 2 are inconsistent with the boards summary. The board attempts to group wholesale rates or recent rates with market rates paid by the market (Consumer) The board also attempts to signify Appraisers are obligated to pay for AMC or third party fees.

First presumption of compliance (§ 226.42(f)(2)).

A creditor and its agent are presumed to compensate a fee appraiser at a customary and reasonable rate if:

- The amount of compensation is reasonably related to recent rates for appraisal services performed in the geographic market of the property. The creditor or its agent must identify recent rates and make any adjustments necessary to account for specific factors, such as the type of property, the scope of work, and the fee appraiser's qualifications; and

The board needs, must and is obligated to define market rates currently being paid by consumers is in line with the board's definition of Customary and Reasonable fees," *the marketplace should be the primary determiner of the value of appraisal services, and hence the customary and reasonable rate of compensation for fee appraisers.*"

If the board firmly believes this than why is the board allowing the injection of wholesale prices created by and currently being used by AMCs and third party management companies to be considered as market? Clearly all other laws on the subject are clearly attempting to prevent this. Why is the board entertaining or even considering any sub markets created by the sunsetted HVCC, when the law was clearly written to put a stop to this type of behavior.

- The creditor and its agent do not engage in any anticompetitive actions in violation of state or federal law that affect the rate of compensation paid to fee appraisers, such as price-fixing or restricting others from entering the market.

This is also a contradiction in the terms stated in the Final Interim Rule. The Appraiser is NOT obligated to NOR mandated to pay the AMC or any third party fee. Fees incurred by the AMC or third party are negotiated between the lender and AMC or third party. Why does the board refer to another market between Appraisers and Third party companies? The relationship between the AMC and the lender/bank fiduciary or other is between the lender/bank's decision to hire an AMC or third party. Regardless of that relationship, the Appraiser, as stated by law, SHALL be paid Customary and Reasonable fee for the performance of the Appraisal. There is no mention of any sub markets created by AMC's or wholesale markets in the law. We know the law was created and signed to prevent this. No third party company should have the right to retain in part or in whole the fee for which it was intended. We respectfully ask as well as demand the board clarify this.

Second presumption of compliance (§ 226.42(f)(3)).

A creditor and its agent are also presumed to comply if the creditor or its agent establishes a fee by relying on rates in the geographic market of the property being appraised established by objective third-party information, including fee schedules, studies, and surveys prepared by independent third parties such as government agencies, academic institutions, and private research firms. The interim final rule follows the statute in requiring that fee schedules, studies, and surveys, or information derived from them, used to qualify for this presumption of compliance must exclude compensation paid to fee appraisers for appraisals ordered by appraisal management companies (defined in § 226.42(f)(4)(iii)).

Presumption 2 is also a contradiction in the terms stated in the Interim Final Rule. A creditor or its agent, defined by the board, should NEVER be allowed to establish ANY fee under any circumstance with the Appraiser. If the board believes "*the marketplace should be the primary determiner of the value of appraisal services"* then why is the board allowing/mandating creditors and their agents establish Appraisal fees? The board also fails to follow through with their stance on the marketplace determining the fee paid by Consumers as a source for Appraisal Fees. Market fees for Appraisal services are already documented on the HUD1.

I have received a letter from Benjamin S. Bernake via the house financial services committee regarding the enforcement of AMC violations and such. I would like to thank you very much for the response. I would also like to point out that, while important, was not the whole of my concerns. As stated above, Appraisers need to remain Independent from the process as to ensure the public trust. I think you will agree that when anyone controls another person's salary, there is no room for Independence.

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