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Local Knowledge ... Nationwide

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December 14, 2010

Ms. Jennifer J. Johnson
Secretary, Board of Governors
Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Re: Comments to Interim Final Rule
Docket No. R-1394 and RIN No. AD-7100-56

Dear Federal Regulators:

IRR-Residential appreciates this opportunity to provide comments on the Interim Final Rules (the 'Interim Rules") issued in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").

IRR-Residential is one of the largest independent residential real estate appraisal organizations in the US. Our organization is anchored by skilled local valuation professionals that are highly respected in the industry. IRR-Residential has approximately 48 independently owned and operated franchise affiliate offices spread across 40 markets and 20 states. In addition, at the corporate level, IRR-Residential provides national appraisal management services to clients in all 50 states.

We have several specific comments and suggestions for the Interim Rules, but there are a several overview issues we wish to highlight here.

Reasonable and Customary Fees to Appraisers Provide for a Healthier Appraisal Industry to the Benefit of all Loan Participants

Appraisal fee compression largely caused by the interjection of AMC companies between creditors and local appraisers has had a very disruptive impact on the industry. While generally believing that the free market should set fees, we do support the Dodd-Frank Act requirement of paying reasonable and customary fees to appraisers, with such fees established by the non-AMC driven appraisal market. We believe this change will benefit the appraisal industry by causing more appraisal work to be directed towards the better appraisers and appraisal companies, from which all loan participants benefit.

One concern we have is how the enforcement of the reasonable and customary fee's will be structured, especially since non-compliance can result in a $10,000 fine per day. Additional guidance is needed so that there is a clear understanding as it relates to enforcement and what would constitute non-compliance. There should not be room for

broad interpretation of what is not reasonable and customary. Failure to pay an appraiser appropriately is to fall under TILA and the Consumer Protection Bureau with enforcement not only by the federal government but also State Attorney Generals who if not provided specific rules could result in unsupported claims. Therefore, we highly encourage specific guidelines of what would be determined to be in or out of compliance.

**Independent Appraisals Protect the Creditor,
the Secondary Market, the Consumer and the Taxpayer**

The fundamental principles of Title XI of FIRREA, USPAP and state licensing laws hold that valuation of real estate must be an independent process from the commission-based services of financing, managing, leasing and selling property. Numerous states have incorporated within their regulations a required separation of appraisal and brokerage services for real estate. An independent appraisal serves as a safeguard for the protection of all current and future parties to the mortgage loan transaction, including the borrower, the originating lender, the secondary market participant and as we are now seeing the taxpayer.

We support and are pleased that the Dodd-Frank Act helps to further codify policies that require, not just encourage, appraisal management processes at creditors that are independent from the influence of loan origination, portfolio management and disposition functions.

**Valuations From Appraisers Are More Reliable
And Better Protect Loan Participants**

Valuations prepared by independent appraisers provide more consistent and reliable valuations as compared to alternative non-automated valuation products. Appraisers are licensed, professionally trained in valuing real estate and must meet minimum education and experience standards.

We suggest that creditors should be broadly encouraged to seek the most reliable valuation products appropriate for the credit decisions undertaken. We continue to have concern at the number of non-appraiser valuation products, including broker price opinions, that are used for post origination valuation needs.

We have the following specific suggestions for the Interim Final Rules:

> ***Page 74: The Board solicits comment on whether the factors in 226.42(F)(2)(i)-(f) are appropriate, and whether other factors should be included.***
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> The following existing suggested factors are each deemed appropriate for consideration by a creditor, or its agent, in determining reasonable and customary fees.
>
> (1) The type of property;
> (2) The scope of work;

(3) The time in which the appraisal services are required to be performed;
(4) Fee appraiser qualifications;
(5) Fee appraiser experience and professional record; and
(6) Fee appraiser work quality.

In addition, we suggest there needs to be the ability for fee adjustment for "volume based discounts." For example, a Creditor being able to pay a lower fee to an appraiser that receives a higher volume of work as compared to the fee paid to an appraiser that receives a much lower volume of work.

More importantly, we suggest there needs to be commentary provided that establishes that the creditor, or their agent, is able to establish fee structures that reasonably take into account these factors in total. And further, that such fee structures are able to establish the fees offered to appraisers to perform valuation services. The intent is to make clear that the appraisal fee offered to two different appraisers for two identical properties will not necessarily be different just because one appraiser has 20 years of experience and has an appraisal designation as compared to the other that may only have 5 years experience and no designation.

Page 81: The Board requests comment on whether the interim final rules definition of "appraisal management company" is appropriate for the final rule.

We believe there is a need to further differentiate between an "appraisal company" and an "appraisal management company."

First, a person or entity that uses W-2 staff employee appraisers, no matter how large or in how many states they provide services, should not fall under the definition of an AMC.

Further, we believe that smaller firms even if they do not utilize W-2 staff appraisers, should not be the target of any new costs and administrative burdens generated from these definitions of an appraisal management company.

The challenge is in differentiating between sizable appraisal companies that utilize an independent contractor relationship with their regular appraisers and an appraisal management company, which also typically utilizes independent contractor appraisers to perform valuation assignments? At what point does one become the other?

The Interim Rule calls attention to the AMC's network or panel of appraisers, but in our view it does not adequately define which appraisers should be included. We suggest there are situations where an independent contractor relationship with an appraiser can be similar to that of a W-2 staff appraiser and therefore should not be counted as an AMC network or panel appraiser.

The percent of work that the independent contractor appraiser receives from an entity is important. It is also telling if the appraisal reports produced are in the name of the entity, rather than the independent contractor company's name. Combining the two – receiving a high percentage of their work and using the entity name in their reports, suggests the appraiser is more like an employee staff appraiser than a true independent contractor appraiser. In these cases, the entity has simply chosen an independent contractor business relationship rather than an employee relationship. We suggest these appraisers should not be counted in a network or panel appraiser count.

An AMC typically has a lower percentage of work relationship with their independent contractor appraisers. In addition, the company name in their appraisal reports is typically that of the independent contractor, not the AMC. Both of these circumstances suggest a true independent contractor relationship that warrants being counted in the AMC's network or panel appraiser count.

Properly defining those appraisers that are counted or not counted in the AMC network or panel of appraisers then allows for a size of such panel to be applied to exclude smaller firms, and avoid some appraisal companies from improperly falling into an AMC definition.

We offer the following amended language to define an appraisal management company:

"An appraisal management company (AMC) is any person or entity authorized to do the following actions on behalf of the creditor: (1) recruit, select and retain appraisers; (2) contract with appraisers to perform appraisal assignments; (3) manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and compensating appraisers for services performed; or 4) review and verify the work of appraisers.

Provided however, the definition of an AMC shall not include those entities that engage appraisers to perform an appraisal from a network or panel of less than 20 certified or licensed appraisers in a state or 40 or more nationally within a given year. For purposes of determining the size of the network or panel of appraisers the following shall be excluded from such count: (1) W-2 employee appraisers of the person or entity, and (2) independent contractors of the person or entity provided they receive more than 60% of their assignments from the person or entity and the person or entity's name is utilized as the company name on the appraisal reports."

IRR-Residential thanks you again for your consideration of our points of view and comments to the Dodd-Frank Act and Interim Final Rules. If you have any questions about this matter and our comments, please contact us at (913) 261-1850.

Sincerely,

IRR-RESIDENTIAL, LLC

John K. Wood, III
President & COO