



December 27, 2010

Jennifer Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. R-1394

VIA ELECTRONIC MAIL:

Dear Ms. Johnson,

The Michigan Credit Union League (MCUL) appreciates the opportunity to comment on the Federal Reserve Board's (the Board's) proposed amendments to Regulation Z in an effort to establish new requirements for appraisal independence for consumer credit transactions. MCUL is a statewide trade association representing 95% of the credit unions located in Michigan.

The interim rule was designed to ensure that real estate appraisals used to support creditors' underwriting decisions are based on the appraiser's independent professional judgment, as well as to ensure that creditors and their agents pay "customary and reasonable" fees to appraisers. While MCUL supports ensuring that appraisers use independent professional judgment, MCUL strongly believes that the Board's good intentions in setting "customary and reasonable fees" are contrary to free market economics and will not serve to improve the appraisal process.

Discussion

Coercion

Under the interim final rule, no covered person may or attempt to, directly or indirectly, cause the value assigned to a consumer's dwelling to be based on any factor other than the independent judgment of a person that prepares valuation through, among other things, coercion.

Among the examples of coercive activity include "excluding a person that prepares a valuation from consideration for future engagement because the person reports a value for the consumer's principal dwelling that does not meet or exceed a predetermined threshold."

The interim final rule obviously neglects to recognize the fact that not all appraisers do their jobs professionally. It does, however, appear to require that these unprofessional appraisers continue to be hired or financial institutions would face administrative action for violating the coercion provisions of the regulation. It is not unheard of for lenders to have a general idea of what to expect with respect to the value of a given property in a given geographic area. It is also not unheard of for appraisers to use old maps, fail to take into account foreclosed homes in a given area, and provide incomplete and inaccurate assessments of properties. At what point

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would a lender be permitted to exclude a given appraiser from consideration of future engagement because the appraiser did not do a professional job without it rising to the level of coercion under the regulation?

Customary and Reasonable Compensation

The interim final rule requires a creditor and its agents to compensate a fee appraiser for performing appraisal services that is “customary and reasonable” for comparable appraisal services performed in the geographic market of the property being appraised. The rule provides two alternative ways in which creditors and their agents may qualify for a presumption of compliance.

Under the first alternative, 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; and
- 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.

Under the second alternative, 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:

- Is 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;
- Is based on recent rates paid to a representative sample of providers of appraisal services in the geographic market of the property being appraised or the fee schedules of those providers; and
- In the case of information based on fee schedules, studies, and surveys, such fee schedules, studies, or surveys, or the information derived therefrom, excludes compensation paid to fee appraisers for appraisals ordered by appraisal management companies.

MCUL believes that while the first alternative prohibits price fixing, both the first and the second alternatives achieve it.

The first alternative allows creditors and their agents to make adjustments to recent rates to account for specific factors, such as the type of property, the scope of work, and the fee appraiser’s qualifications, experience and professional record. As prices for appraisal services are market driven and reflect variations in the scope of work performed by appraisers, the second alternative is completely unnecessary. Appraisal fees should continue to be determined by the principals of a free market economy, not by government mandate.

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Competition drives *down* costs. However, by restricting individuals from negotiating a fair and mutually agreeable price for an appraisal service, the cost for appraisals will undoubtedly *rise*, as every appraiser will require the highest “recent” rate, or the highest rate as determined by a government or private survey. Thus, the price fixing the Board intends to avoid will be exactly what occurs.

If an appraiser accepts a fee for a service, it should not matter what this fee is so long as the appraisal used to support a creditor’s underwriting decisions is based on the appraiser’s independent professional judgment. Additionally, because appraisal fees are typically borne by consumers, consumers will be the most negatively impacted by this interim final rule, as the cost of appraisals for a real estate loan or refinancing will undoubtedly increase. Many consumers cannot afford the costs of refinancing in the current market in order to save their home. This interim final rule does nothing to alleviate this financial burden. Higher appraisal fees will not result in higher quality appraisals.

Failure to Perform Contractual Obligations

The commentary to the interim final rule does not prohibit a creditor or its agent from withholding compensation from a fee appraiser for failing to meet contractual obligations, and includes examples of contractual obligations that, if breached, would warrant withholding compensation without violating this section of the rule.

MCUL believes that the regulation should permit creditors and their agents to exclude a given appraiser from consideration of future engagement in the event the appraiser fails to meet contractual obligations.

Additionally, MCUL does not believe that the commentary should enumerate additional examples of what would warrant withholding compensation in the event of a breach. So long as the terms do not rise to the level of illegality, the parties to such a transaction should be free to negotiate the terms of the appraisal contract without government intervention.

Conclusion

MCUL supports rules designed to ensure the independent judgment of real estate appraisals. However, establishing the fees for appraisals does nothing to advance the independent judgment of appraisers, nor the quality of the appraisals.

MCUL strongly believes creditors and their agents should not be forced to employ the services of unprofessional appraisals under the threat of administrative action. MCUL also believes that creditors and their agents should continue to work with appraisers to mutually agree on the appropriate appraisal fees without government intervention that will most assuredly lead to higher costs and price fixing. So long as the appraisal used to support a creditor’s underwriting decisions is based on the appraiser’s independent professional judgment, the amount of the fee should not matter.

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MCUL appreciates the opportunity to provide comment on this proposed rule.

Sincerely,

A handwritten signature in black ink, appearing to read 'DA', with a long horizontal flourish extending to the right.

David Adams
Chief Executive Officer