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The Collateral Risk Network provided comments on September 15 and I have attached those comments since much of what we originally outlined will be reiterated here. A small group of CRN members met on November 29th to craft comments to the Interim Final comments published October 18, 2010.

Principally there were two areas where we felt additional clarification would be helpful to all stakeholders.

REASONABLE & CUSTOMARY FEES

This is by far the mostly hotly debated issue. As a group, we felt that the Dodd Frank law was reasonably clear that the intent was to right the imbalance created by HVCC. HVCC was, for the most part, a huge leap forward to removing bias from appraisals. The strongest component of the code was the removal of mortgage brokers from the ordering process. But the shift towards AMCs becoming the predominate conduit for appraisal ordering, also meant that appraiser's fees were reduced.

What should be the focus of all of these regulations is an environment whereby appraisers can produce credible reports free from bias. Please note, in no way are we arguing what fee appraisers should be paid, or that they need to be paid more or less. That is a different debate. What we are debating is the anticompetitive environment that ultimately harms all constituents. The current scenario is not sustainable. Taken to its logical conclusion the appraisal profession will likely not improve unless there are significant interventions in regulation, policy, and processes.

Currently, appraisers pay for the services of the AMC by AMCs taking a "cut" of the appraisal fee that the lender charges the consumer. In practice, that means that the AMC, for profit reasons, is motivated to engage the cheapest appraiser, not the best appraiser for the assignment. We are at a race to the bottom for fees. The argument has been made that increasing fees doesn't automatically ensure a more credible appraisal. It certainly wouldn't if you were tapping appraisers from the same pool. But there are a vast number within the appraisal community who won't do business with AMCs because of the fee reductions. So at present we have a structure that excludes many of the most competent appraisers. We also, as a profession, have mechanisms in place with flawed regulations that will discourage young professionals from entrance into appraising. Appraisers are exiting due to fee compression, we have an aging population, and we aren't attracting talent.



Why do lenders complain about appraisal quality deterioration post HVCC yet perpetuate the cycle? Lenders are getting the services of the AMC for free. The appraisers are paid by the netting out of the AMC fee from the gross fee. And historically no one has been held accountable for poor quality appraisals. Lenders need the political cover of strong regulation and enforcement, to level the playing field. As was the case pre HVCC, valuations remain a competitive issue. Lenders were aware that mortgage brokers were exerting pressure on appraisers but for competitive reasons no lender wanted to be first. The same is true with appraisal fees. Some lenders feel if they absorb the cost of appraisal management or pass the fees on to consumers they won't be competitive.

Appraisal Departments at lending institutions used to function like an internal audit department. They were independent of sales and production. Then the trend began where lenders outsourced their appraisal management functions to AMCs or created their own subsidiaries to turn what was once a cost center into a profit center. The flaws in that plan have become obvious in the current economic environment. Pressures on extracting short term profits to the detriment of long term risks has not gone away. The appraisal management of course, must occur, regardless of whether it is internal or external. It just shouldn't be a profit center for a lender.

In the context of Interim Final Rules we are proposing that Presumption One be amended to include that fees may be taken from the marketplace "in the absence of an AMC". We believe that would align with the intent of the law. Presumption Two we suggest would be a safe harbor. If a lender or their agent uses academic studies, fee surveys, or government agency fee schedules they have a safe harbor.

There have been comments that these sources do not exist. They do and studies are ongoing. In addition there is a vast amount of data to be gleaned from lenders who directly engage appraisers and have a long history of doing so. Inquiries to banks were part of the survey that VA conducted when establishing their schedule. There is ample data "in the absence of an AMC" to determine what reasonable and customary fees should be.

We do not recommend that a national appraisal fee schedule be established. For years, appraisers operated in a competitive and open market. Fee surveys will undoubtedly reveal a range of fees reflective of the appraiser's skill level and service. We recommend transparency in the reporting of fees. Transparency by itself is not sufficient to repair the inequities in appraisal fees. A fair and competitive RFP process whereby AMCs compete with each other to provide services to the lender would appear to more properly align incentives. In other words this "cost plus" model would end the practice of the appraiser paying for the services of the lender that has created havoc in the market place. The appraisal fee collected from the borrower would be the fee to the appraiser or appraisal company. And the management fee would be the fee to the AMC or the lender's appraisal department.

Appraisal Management Companies provide valuable services to the lending community. There is a broad spectrum of services offered and little transparency in the menu and fees for those services. What is the cost of appraisal management as opposed to appraisal fees? What is a volume discount is? Who is the beneficiary of the volume discount? If a volume discount is negotiated between the lender and the AMC, for management services not appraisal fees, the Lender, AMC, and ultimately the consumer would benefit. If the AMC or Lender



who directly engages a sole practitioner and asks for a volume discount that is impractical on many levels. Is the discount going to be a rebate back to the consumer?

There are some factual misrepresentations made in the Interim Final Comments that we would like to clarify. Generally there are few advantages for appraisers to work with AMCs. Please note all AMCs are not created equally but generally the appraiser does the same work regardless if they are engaged by AMCs or directly by the lender. AMCs do not replace the marketing role for appraisers. The value added to the profession is that most of the technical advances have occurred and are occurring at AMCs because of the necessity of aggregating data and streamlining processes. We are not proposing that the fee for AMC services be more or less either but an open competitive environment where quality is of primary importance with service and fee being appropriately aligned.

Operationally the requirement that a lender report the appraisal fees at time of application may possibly lead to higher fees. One of the unintended benefits may be that more information about the property to be appraised is collected at time of application. That would allow a more complex fee schedule to be applied. Appraisers frequently complain that addresses are incorrect and properties are commercial in use or highly complex in other ways that they don't discover until after inspection. This back and forth also adds time cost to the appraisal process.

Transparency does come at a cost. Lenders must deliver appraisals prior to settlement. Appraisal fees must be established at time of application sometimes to the detriment of one of the parties-- the appraiser, the lender or the AMC. What would be unfortunate is unnecessary litigation due to lack of clarity in the regulations. We need confidence in the markets and a large part of that equation lies in collateral valuations. All stakeholders need to be able to transact business in a safe, fair, and competitive marketplace.

DEFINITIONS OF AMCS, FEE APPRAISERS, APPRAISAL COMPANIES

I. Definition of "Fee Appraiser" in Section 226.42(f) of Regulation Z

The Rule creates Section 226.42(f)(1) of Regulation Z, the federal regulation that implements TILA, and requires that creditors and their agents compensate *fee appraisers* for performing appraisal services at a rate that is customary and reasonable for comparable appraisal services performed in the geographic market of the property being appraised. Specifically, Section 226.42(f) of Regulation Z implements Section 129E of TILA, which was enacted on July 21, 2010 as Section 1472 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). Section 129E of TILA created new requirements for appraisal independence for consumer credit transactions secured by the consumer's principal dwelling.

Importantly, Section 226.42(f)(1) of Regulation Z clarifies that "agents" of the creditor do not include any fee appraiser as defined in paragraph (f)(4)(i) of Section 226.42. The Board clearly excluded fee appraisal companies ("FACs") from the requirement of providing customary and reasonable compensation for a logical and compelling reason, namely that FACs also pay their employee staff appraisers a form of salary and provide them with office services as well as health insurance and other employment benefits. The Board notes this fact regarding FACs and their employee staff appraisers in the Section-by-Section Analysis of the Rule. Thus, if TILA required FACs to pay their employee staff appraisers customary and reasonable fees for each



appraisal assignment, those companies would be unduly financially burdened, and such a requirement may undermine their viability as a provider of appraisal services, which the Board believes would ultimately harm consumers by reducing competition in the market. The Board also notes this rationale regarding competition in the market in the Section-by-Section Analysis of the Rule.

However, in order to ensure that only FACs, and not appraisal management companies ("AMCs") or other hybrid appraisal companies that function primarily like AMCs, are excluded from the requirement to provide customary and reasonable fees, we believe the definition of "fee appraiser" should be further clarified. We respectfully suggest that the definition of "fee appraiser" in Section 226.42(f)(4)(i) of Regulation Z should be amended to clarify that the defined term includes *only* companies that employ state-licensed or state-certified appraisers on a W-2 employment basis. Specifically, we propose that a new clause "***on a W-2 employment basis***" be added to the existing definition of "fee appraiser" after the phrase "employs state-licensed or state-certified appraisers." The proposed definition "fee appraiser" in Section 226.42(f)(4)(i) as revised with our amendment in bold italics, would read as follows:

(i) Fee appraiser. The term "fee appraiser" means--

(A) A natural person who is a state-licensed or state-certified appraiser and receives a fee for performing an appraisal, but who is not an employee of the person engaging the appraiser; or

(B) An organization that, in the ordinary course of business, employs state-licensed or state-certified appraisers ***on a W-2 employment basis*** to perform appraisals, receives a fee for performing appraisals, and is not subject to the requirements of section 1124 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.).

Further, the Rule also creates Paragraph 42(f)(4)(i) of the Official Staff Commentary to Regulation Z (the "Commentary"), which can be amended in a corresponding manner, to further clarify the meaning of "fee appraiser" in Section 226.42(f)(4)(i) of Regulation Z. We propose adding a new section to Paragraph 42(f)(4)(i) of the Commentary, which would be cited as Paragraph 42(f)(4)(i)-2 and read as follows:

(ii) W-2 employment basis. The term "W-2 employment basis" in Section 226.42(f)(4)(i) means the classification of natural persons as employees using the Internal Revenue Service's right-to-control test under the common law agency doctrine, with the results of such test generally determining whether an organization files a W-2 or a 1099 for the person. This meaning of "fee appraiser" in Section 226.42(f)(4)(i) necessarily excludes an organization that utilizes persons on a 1099-basis for the completion of appraisals.

II. Definition of "Appraisal Management Company" in Section 226.42(f)(4)(iii) of Regulation Z

The Rule also creates Section 226.42(f)(3) of Regulation Z, which states that creditors and their agents will be presumed to comply with the requirement to compensate fee appraisers for performing appraisal services at a rate that is customary and reasonable if the creditor or its agent determines "the amount of compensation paid to the fee appraiser by relying on information about rates that:

1. Is based on 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;



2. 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
3. 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 as defined in paragraph (f)(4)(iii) of this section.***



This concept is taken from Section 129E of TILA, as implemented by Dodd-Frank, which excluded from fee studies assignments ordered by AMCs. Section 226.42(f)(4)(iii) defines "appraisal management company" as any person authorized to perform one or more of the following actions on behalf of the creditor:

1. Recruit, select, and retain fee appraisers;
2. Contract with fee appraisers to perform appraisal services;
3. Manage the process of having an appraisal performed, including providing administrative services 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 fee appraisers for services performed; **or**
4. Review and verify the work of fee appraisers.

The Board took the majority of this definition of "appraisal management company" verbatim from Section 1124 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), which was enacted by Dodd-Frank, and requires in pertinent part that AMCs register with state regulatory bodies. However, in order to clarify that the definition of "appraisal management company" exclude FACs from its meaning, we respectfully suggest that the definition in Section 226.42(f)(4)(iii) of Regulation Z should be amended to specifically state that FACs are not covered within the meaning of "appraisal management company." Note that this will also ensure that only AMC fee surveys and data are excluded from the pricing rate determinations. Specifically, we propose that a new clause "***other than a person or organization that meets the definition of "fee appraiser" as that term is defined in paragraph (f)(4)(i)***" be added to the existing definition of "appraisal management company" after the phrase "means any person." The proposed definition "appraisal management company" in Section 226.42(f)(4)(iii), as revised with our amendment in bold italics, would read as follows:

(iii) Appraisal management company. The term "appraisal management company" means any person, ***other than a person or organization that meets the definition of "fee appraiser" as that term is defined in paragraph (f)(4)(i)***, authorized to perform one or more of the following actions on behalf of the creditor--

- (A) Recruit, select, and retain fee appraisers;
- (B) Contract with fee appraisers to perform appraisal services;
- (C) Manage the process of having an appraisal performed, including providing administrative services 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 fee appraisers for services performed; or
- (D) Review and verify the work of fee appraisers.

III. Conclusion

We believe that making the aforementioned changes to the definitions of "fee appraiser" and "appraisal management company" would greatly help to clarify the scope of the Rule, and avoid any unintended consequences or confusion surrounding the Rule's requirements for the appraisal industry.



To summarize we strongly believe that the spirit of Dodd Frank is positive and will strengthen appraisal independence if first made clear and then strictly enforced. We do not believe that status quo was the intention of the law and we urge the modifications as we outlined to be included in final guidance. In the midst of this financial crisis we have an opportunity to enact meaningful reforms that will strengthen the safety and soundness of housing finance especially in collateral valuation.

We appreciate the opportunity to comment.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joan N. Trice", is positioned below the word "Sincerely,".

Joan N. Trice
Chief Executive Officer
Allterra Group, LLC

JNT:kfc

Attachment

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