From: Britton Appraisal, Brad Britton

Subject: Regulation Z -- Truth in Lending

Comments:

Hello,

From: "Brad Britton"
To: Jamie.Z.Goodson, Lorna.M.Neill, Virginia.Gibbs, Walter.McEwen, Will.Giles
Cc: "I see NBC"
Date: 04/14/2011 12:37 PM
Subject: Clarify Customary and Reasonable Appraisal Fees

Here is a copy of a petition that I believe in completely. A lot of my appraiser friends only increased their fee April 2001 a few dollars because most AMC's used the Presumption 1 rule to indicate what a fee was and did not quote the source of the fee schedule because in Presumption 1 they did not have to do that.

As the petition says "pick up the phone and call an appraiser in any city/rural area and ask a fee quote for a typical single family home and that is the market fee". In my area of Orange County, CA a typical fee for years was $350. That was a fee that was charged in 2000 well into 2008/2009. That means if the cost of living went up (and it did) the appraiser made less of a profit. I do not work for the AMC; they do not provide me with anything. They are basically offering a service to the bank/lender to route an appraisal request to an appraiser; check appraisal for technical errors; sent finished product to bank/lender. That is what banks did before AMC's took control of 80% of the market. The may have to have several computer servers to do that routing/QC but the appraiser pays for various software licenses (mine total several thousand dollars per year); car upkeep/gas; Errors & Omissions Insurance; office supplies and other expenses. I found out the last couple of years that at $200 (and sometimes less) for a typical property I do not make a profit. The promise of volume did not happen. Most appraisers are individual owners that get hit with a self-employment tax (15% +/-) and income tax.

Please help all appraisers at least get a market fee for their work. I understand banks/lenders wanting a fair fee but artificially suppressing the market fees is not right.

Thank you. Please read the petition below.

On October 18, 2010, the Federal Reserve Board announced an interim final rule to Regulation Z of Title 12, also known as the Truth in Lending Act (TILA). One of the elements to Regulation Z is a binding requirement upon creditors and appraisal management companies to ensure that appraisers who are not employees of creditors or of the appraisal management companies receive customary and reasonable payments for their services.

In preparing this interim final rule, the Federal Reserve Board did not specifically identify which appraisal fee schedules, surveys or studies that would be appropriate to designate as a 'safe harbor' for creditors and their agents to comply with the reasonable and customary fee requirements of TILA. In lieu of identifying these schedules, surveys or studies, the Board basically

offered two alternatives to creditors and appraisal management companies; either conduct their own surveys of fees for a locale and operate off the presumption that those surveys are reasonably accurate (Presumption 1), or rely on other fee surveys or studies conducted by objective third parties such as government agencies, academic institutions, and private research firms and rely on the presumption that they are accurate (Presumption 2).

The specific language of both (TILA) and the FRB's interim final rule specifically exclude the use of AMC fees as the basis for identifying the thresholds for reasonable and customary appraisal fees. In fact, the final interim rule specifically refers to this prohibition several times.

It is our assertion that there is no language in the "Presumption 1" paragraphs that indicate that either Congress or the Board intended to allow the AMCs to include their own fees or those of other AMCs as the basis for reasonable or customary appraisal fees. We believe it is obvious that the term:

"...recent rates paid for comparable appraisal services..."

as stated in Presumption 1 *is not* synonymous with, nor should it be interpreted as:

"...recent rates paid by AMCs for comparable appraisal services..."

We also assert that ample evidence exists in the market in virtually all locales as to what local appraisers charge their non-AMC clients for such appraisal work. No AMC is compelled to actually wonder what fees the appraisers charge their non-AMC clients - all they have to do is pick up the phone and start asking.

As of the implementation date of the final interim rule, many appraisal management companies have made a good faith effort to comply with the requirements in TILA to ensure that the appraisers they engage are paid fees that are reasonable and customary for those markets. Some of these AMCs have accomplished this by employing Presumption 1 (conducting their own market surveys), while others have accomplished this by employing Presumption 2 (relying on other published fee schedules and surveys developed by objective third parties). Some AMCs have gone so far as to employ both methods as a means of ensuring their compliance. As appraisers, we applaud and support the good faith efforts of those AMCs that have chosen to adhere to the law as written.

Sadly, as of the implementation date of 04/2011, some AMCs have chosen to flaunt the letter and specific intent of the law (TILA) as well as that of the interim final rule. Despite the specific prohibition against including AMC fees as part of those surveys, a few of the high profile AMCs have even gone so far as to erroneously assert that the final interim rule specifically allows them to reference their own fees and/or those of other AMCs in their surveys. This, despite the repeated references in TILA and the interim final rule to the contrary.

To the extent such violations are occurring in the market the results serve to undermine both the letter and intent of the law (TILA) as written. The "violator" AMCs have undermined the level playing field on which they compete in the market with other AMCs that are in compliance, not to mention seriously degrading the economic viability of the appraisers who actually perform the appraisals being used in these transactions. The damages to the professional

appraiser community extend across all levels of experience and competency, and serve to induce some appraisers who work for the AMCs to attempt to compensate for these grossly substandard fees by sacrificing quality and due diligence for increased assignment volume. Obviously this has also had a negative impact on the utility of those appraisals as used by the creditors, not to mention the negative impacts on consumer interests and the federal banking regulatory interests.

Simply put, if a violator AMC is billing a consumer $500 or more for a comprehensive residential appraisal, that consumer's interests cannot be well served on a consistent basis when that AMC makes their primary choice of appraiser based on a unilaterally imposed fee structure that is, in some cases, less than half of the prevailing rate being charged in the market to any other type of user. That some of the biggest AMCs are wholly-owned subsidiaries of the lending institutions they represent essentially amounts to an additional hidden fee being paid - by the consumers - to those lenders in those loan transactions.

We, the undersigned, represent a large number of licensed and certified real estate appraisers in the United States. We respectfully request that the Board take action to publicly reiterate the prohibitions contained in both TILA and the Board's interim final rule against the reliance on any survey, conducted by any party, that unlawfully includes AMC fees and purports to use them as the basis, in part or in whole, for establishing the thresholds for reasonable and customary appraisal fees as referenced. In addition to public guidance, we also request that the Board act promptly and effectively to investigate complaints involving allegations of the blatant violations of these prohibitions as stated.

Thank you,

Bradford R Britton
Britton Appraisal