

**American Financial Services Association
Consumer Mortgage Coalition
Housing Policy Council
Mortgage Bankers Association
Title & Appraisal Vendor Management Association**

December 21, 2010

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

Re: Docket No. R-1394
Regulation Z Interim Final Rule, Valuation Independence

Dear Ms. Johnson:

The undersigned trade associations support the new interim final regulation that the Federal Reserve Board (Board) released on October 18, 2010 (the Interim Final Rule). The Interim Final Rule implements a requirement in section 1472 of the Dodd-Frank Act¹ (Section 1472) concerning appraiser independence, and implements customary and reasonable appraisal fee requirements.

We explain below the reasons we believe the provisions in the Interim Final Rule concerning customary and reasonable fees are well designed to protect consumers, an overarching Congressional purpose in enacting the Dodd-Frank Act. We start with a historical background of the Home Valuation Code of Conduct (HVCC) and the Dodd-Frank Act because both impact the issues presented in the present rulemaking.

We also request clarification of certain items.

¹ Pub. L. No. 111-203, 124 Stat. 1376, 2187 – 90 (2010).

The HVCC

Section 1472 voids the HVCC when the Board promulgates an appraisal independence regulation. Just before the Board published its Interim Final Rule, Fannie Mae and Freddie Mac (the GSEs) announced appraisal requirements that very closely follow the HVCC.

The HVCC was created to improve the quality of appraisals on loans that the GSEs acquire. It was based on an agreement between the GSEs, the Federal Housing Finance Agency, and the New York Attorney General. One of its most significant changes was to ban the use of appraisals ordered by third parties, including mortgage brokers and real estate agents. Those third parties have an incentive to get a loan to close regardless of its future performance. This misaligned incentive puts consumers at risk of overpaying for a house, and puts lenders and mortgage investors at risk of loss. Before the HVCC, when a lender refused to accept an appraisal ordered by a third-party, the broker or real estate agent could simply shop the appraisal from lender to lender until one accepted it, creating a “race to the bottom” in appraisal standards. The HVCC’s ban on this practice improved significantly the quality of appraisals by appropriately aligning incentives.

The HVCC did not create appraisal management companies (AMCs), which long predate the HVCC. There are factors wholly unrelated to the HVCC that have contributed to AMCs’ growth. One is that AMCs operate as a layer of insulation between loan officers and appraisers. This extra layer of insulation improves appraiser independence, which is important to lenders and investors. Lenders choose to use AMCs in part to benefit from this protection. Another factor in AMC growth is the AMCs’ development and use of technology to manage the appraisal process, making it more efficient, faster, and of improved quality.

AMCs operate differently than traditional appraisal firms, although they both deliver appraisals to mortgage lenders. AMCs do what their name indicates – they manage the appraisal process. Some creditors perform appraisal management tasks in-house. In contrast, traditional fee appraisers market their services, negotiate their fees with lenders, produce appraisals, check them, deliver them to their clients, and handle billing and payments.

Appraisers working with AMCs, or with lenders who manage appraisals in-house, do not participate in the entire appraisal process, they focus only on appraising property. AMCs markets their services; negotiate fees with lenders; provide training for their networks of appraisers; provide technology to appraisers; validate their licensure and certification; confirm their continuing education; and handle the payment process and paperwork for billing lenders and paying appraisers. Finally, and very importantly, AMCs provide the quality controls and quality warranties that many creditors and investors seek. Creditors who manage appraisal in-house similarly provide quality controls.

Appraisers associated with AMCs or with creditors who manage appraisals in-house are freed of management, marketing, and quality control tasks that traditional appraisers perform individually, thereby increasing their efficiency.

Customary and Reasonable Fees

The genesis of the customary and reasonable fee provision in the Interim Final Rule is Section 1472. This section requires lenders and their agents to compensate fee appraisers at a customary and reasonable rate in the market area where the appraised property is located. Section 1472 further provides that evidence for customary and reasonable fees may be drawn from studies, but fee studies must exclude assignments ordered by known appraisal management companies.

Implementing this new statute was made difficult by the fact that a database of actual appraisal fees does not currently exist. There is a Veterans Administration (VA) fee schedule, but it is a schedule of the *highest permissible* fee for appraisals on VA loans. The VA fee schedule is considerably higher than what would be “customary or reasonable” fees in most situations.

The prohibition on using studies of fees for AMC-ordered appraisals makes implementing this Dodd-Frank provision especially complicated because the vast majority of appraisals ordered today are through AMCs. Moreover, it is very difficult to *accurately* measure what is a “customary and reasonable” fee in each market for each mortgage product for the very limited number of appraisers who are not associated with an AMC, particularly if the survey were to be conducted within the antitrust guidelines established by the Federal Trade Commission.

In implementing this provision, the Board had to keep in mind the purpose of the Dodd-Frank Act and the statutory language. A main, overarching Congressional purpose in enacting Dodd-Frank and in establishing the Bureau of Consumer Financial Protection was to protect consumers. However, the appraisal industry has asked the Board to incorporate the VA fee schedule into its regulation (letter attached). As we noted above, the VA fee schedule is considerably higher than what would be customary and reasonable in most markets. If this standard were adopted, consumers would be charged unnecessarily high fees, potentially an increase of as much as \$150 per loan. A consumer protection statute should not unnecessarily increase costs to consumers.

The appraiser industry stated in its September 23, 2010 letter to the Board, “Many of our members report having to accept reduce [sic] fees by as much as 50 percent since the inception of the Home Valuation Code of Conduct.” This reduction in fees was not necessarily caused by the HVCC. The increased market share of AMCs in many ways changed – reduced – the work that fee appraisers do, and shifted the burden of work to AMCs. The fee income merely followed the workload. In addition, many lenders use AMCs because of their quality control capabilities, which include fraud prevention and warranties for quality. Perhaps more importantly, though, the downturn in the real estate markets in the past several years has reduced the volume and compensation for everyone, including appraisers.

The Section 1472 fees provision makes no mention of improving appraisal quality. There are several other provisions in the Dodd-Frank Act that address appraisal quality. Rather, the fees provision appears to have been designed solely to increase fees paid to appraisers, with the end effect of increasing consumer fees.

With this background on the several complicating factors involved in the Interim Final Rule, we

now turn to the rule itself.

The Interim Final Rule

The Board describes its approach to customary and reasonable fees as follows:

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. The “customary and reasonable” compensation provision that Congress adopted as part of TILA is identical to a requirement included in a HUD Mortgagee Letter obligating FHA lenders to ensure that appraisers are paid “at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised.” HUD’s statements regarding this provision recognize the role of the marketplace in determining rates for appraisal services and the importance of accounting for factors that can cause variations in what is a customary and reasonable amount of compensation on a transaction-by-transaction basis. Similarly, TILA Section 129E(i) focuses on the marketplace by permitting use of objective market information to determine rates. The statute also makes allowances for factors that the marketplace acknowledges add to the complexity of an appraisal and thus value of appraisal services in a given transaction, such as “increased time, difficulty, and scope of work.”²

We very strongly support the Board’s view that the marketplace, product, and property type should be the primary determiner of the value of appraisal services. This approach best protects consumers from excessive fees. It permits the marketplace to find and create efficiencies and pass the savings through to consumers. It also permits the continuation of technology advances in the appraisal industry, thus ensuring that appraisals are accurate and are not fraudulent.

Setting fees by a broad-based schedule, such as the VA schedule, would mean all appraisers in a geographic region would be paid the same rate for the same work. A flat-fee approach to appraisal fees would interfere with the incentive to incur the upfront costs to improve technology, and would therefore be very detrimental to consumers and to the safety and soundness of the mortgage lending industry.

Section 1472 requires appraisal fees to be “customary and reasonable for appraisal services performed in the market area of the property being appraised.” Section 1472 permits fees to be determined by “objective third-party information” such as schedules, studies, and surveys. Importantly, however, it does not require the use of objective third-party information, or of schedules, studies, or surveys.

The Interim Final Rule likewise requires fees to be customary and reasonable, and permits them to be established by third-party information such as schedules, studies, and surveys.

Like Section 1472, the Interim Final Rule does not require the use of schedules, studies, or

² 75 Fed. Reg. 66554, 66569 (October 28, 2010) (footnotes and citations omitted).

surveys for determining what fee is customary or reasonable. It presumes that a rate is customary and reasonable if it is “reasonably related to recent rates paid for comparable appraisal services performed in the geographic market of the property being appraised[,]” the creditor reviews specified factors, and the creditor and its agents do not engage in illegal, anti-competitive acts. Recent rates actually paid are the most logical definition of “customary and reasonable” fees.

The Interim Final Rule also limits the fees requirement to “appraisal services,” as Congress requires.

The Board’s approach is soundly based on Section 1472, is logical, and is fair and objective. It promotes the continuation of technology advances in the appraisal industry, which will both enhance the quality of appraisals performed and guard against fraud.

We appreciate and support the Board’s careful drafting of this difficult regulatory provision in a manner that will protect consumers from unnecessary costs.

Requests for Clarification

There are some areas of the Interim Final Rule in which we request clarification.

First, we request clarification that an agent of a creditor may review the factors specified in § 226.42(f)(2)(i) that may require a fee adjustment and make any appropriate adjustments. The rule may be read to mean that only the creditor may make the review and make the adjustments, although an agent may be in a better position to do so.

Second, we request clarification that the Interim Final Rule does not apply to appraisal-related functions performed after loan consummation. A creditor may have an appraiser conduct checks of appraisal work after consummation, and we believe the rule would not apply because there is no consumer credit transaction as a result.

Similarly, we request clarification that the Interim Final Rule does not apply to appraisals prepared in connection with loss mitigation activities, such as a loan modification, short-sale, deed-in-lieu of a foreclosure, or managing real estate owned. Loss mitigation activities are not loan production functions, and they do not result in a new extension of credit.

Finally, we request clarification about whether the Interim Final Rule applies to appraisals performed for a relocation firm rather than for a creditor. A relocation firm may purchase an appraisal to assist an employer who is relocating an employee. The relocation company purchases the appraisal for reasons unrelated to any extension of credit. That company may sell the appraisal to a creditor who may use it in connection with the employee’s loan application.

Conclusion

We are most supportive of the Board's efforts to create a rule that implements Congressional intent to protect consumers. We believe the Board should not amend the substance of its Interim Final Rule.

Sincerely,

American Financial Services Association
Consumer Mortgage Coalition
Housing Policy Council
Mortgage Bankers Association
Title & Appraisal Vendor Management Association

Attachment



September 23, 2010

Kathleen Ryan, Senior Counsel
Division of Consumer and Community Affairs
Federal Reserve Board
Washington, DC 20551

Dear Ms. Ryan and Colleagues:

On behalf of the more than 35,000 members of the undersigned professional appraisal organizations, this letter is a follow-up to the conference call of September 8th soliciting our views regarding the Federal Reserve's implementation of the appraisal independence provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). We greatly appreciate the opportunity to be heard. We are writing now for the purpose of reiterating our views and offering more detailed recommendations to the Fed on the contents of its interim final rule.

This letter is divided into two parts: Part I provides our brief, general observations regarding the impact of the HVCC and HOEPA's anti-coercion provisions. Part II contains our specific positions and recommendations regarding the contents of the interim final rule. You will note that in Part II we address the issue of "customary and reasonable" residential appraiser fees in great detail given this provision's central importance to the new law's appraisal independence requirements. While implementation of the other aspects of the appraisal independence section are discussed in somewhat less detail, our organizations regard them as being of comparable public policy and consumer protection importance. We hope you find our comments helpful and responsive to the specific questions the Fed asked in connection with the conference call.

Part I. General Observations About The HVCC and HOEPA's Anti-Coercion Rules

Home Valuation Code of Conduct Lessons: The HVCC profoundly changed the manner in which residential appraisals were typically ordered in connection with credit secured by real property. It disrupted – and largely ended – the traditional relationships appraisers had developed over decades with mortgage lenders and mortgage brokers, the vast majority of which were lawful and professional. Instead, Appraisal Management Companies (AMCs) became the dominant source of appraisal orders; and, with this dominance, AMCs now exercise almost total control over the terms and conditions of the appraisal, including determinations regarding who does or does not receive appraisal assignments; how much they will be paid; the turn-a-round time for completing the appraisal; the nature and extent of information provided the appraiser about the property to be valued and the scope of work to be performed; and, with whom the appraiser can and cannot communicate to get answers to questions necessary to properly understand and complete the assignment.

HOEPA’s Appraiser Anti-Coercion Rules: The HOEPA Rules establish important benchmarks – now widely recognized in the mortgage lending and housing marketplaces – to prohibit and punish attempts to undermine the independence of the appraiser and the integrity of the appraisal process. The appraisal independence provisions contained in section 1472 of the Dodd-Frank law reinforce, supplement and extend the HOEPA rules. If enforced the HOEPA Rules, are far less prescriptive than the HVCC, which has disrupted or eliminated legitimate business relationships with many ethical and honest real estate professionals. It is our view that had the HOEPA amendments been enacted earlier and aggressively enforced, the HVCC may not have been necessary.

Part II. Recommendations Regarding The Contents Of The Interim Final Rule

Customary And Reasonable Appraiser Fees: As we discussed during the September 8 conference call, the Dodd-Frank Act contains a provision requiring “customary and reasonable” fees be paid to appraisers to reflect what an appraiser would typically earn for an assignment absent the involvement of an appraisal management company (AMC). Under the Act, evidence for such fees may be established by objective third-party information, such as government agency fee schedules, academic studies, and independent private sector surveys. This issue is extremely important given evidence that indicates wide divergence between fees paid to appraisers through appraisal management companies and those retained directly by financial institutions. While some AMCs pay full fees and charge for their services on a “cost-plus” basis, many do not. Many of our members report having to accept reduce fees by as much as 50 percent since the inception of the Home Valuation Code of Conduct.

We believe there are at least three options that can assist in establishing evidence of customary and reasonable fees. First, the Department of Veterans Affairs (VA) has developed a robust Appraisal Fee Schedule¹ that is developed through surveys of local appraisers approved on the VA Fee Panel. These surveys are updated regularly (typically on an annual basis) and are widely trusted as an objective source of market rate information on appraisal fees since appraisals are ordered directly by the VA. As such, we believe the VA is an appropriate standard to be directly referenced in the Interim Final Rule (Ex. “...shall be consistent with fee schedules established by government agencies, such as the Department of Veterans Affairs....”).

We understand several concerns relating to the VA Fee Schedule may have been raised by others. First, it is our understanding that the VA Fee Schedule is derived from a survey of VA Fee Appraisers, and that this survey process may include appraisal assignments that involving appraisal management companies. However, in this regard, it is our opinion that the new law gives deference to government agency fees schedules such as the VA and that it even differentiates between fee “schedules” and fee “studies” and “surveys.”

¹ The Fee Schedules can be found at the following links:

- Denver Regional Loan Center, available [here](#)
- Houston Regional Loan Center, available [here](#)
- St. Paul Regional Loan Center, available [here](#)
- Cleveland Regional Loan Center, available [here](#)
- Roanoke Regional Loan Center, available [here](#)
- Manchester Regional Loan Center, available [here](#)
- St. Petersburg Regional Loan Center, available [here](#)

Further, we understand that some have argued the VA schedule represents *maximum* fees to be paid by the VA to appraisers. While reference to this can be found in VA policy, it is our understanding that the individual schedules themselves identify the *actual* amount paid to the appraiser². At a minimum, it is the amount that is reported on the VA Fee Schedule is the amount that is paid to VA appraisers as a matter of practice.

Beyond this, private sector studies and reports are fast becoming available. At least one appraisal software provider has issued a report of median fees that specifically excludes assignments from known appraisal management companies, a key criterion found in the new law. This information is widely available and reportable to the local level. Further, the Appraisal Institute will be issuing a Request for Proposals shortly to the academic and real estate research communities regarding development of a national fee study that would satisfy the requirements for academic studies and independent private sector surveys found in Dodd-Frank. We believe such a research assignment could utilize actual fee data that can be extracted by several appraisal software companies. Should no private firm want to participate as a sponsor, we believe a study could be conducted using a general survey approach. The important point here is that an industry effort to update and keep current a relevant study is already underway.

Regardless of which fee schedule or survey(s) are identified or accepted by the Federal Reserve, we believe it is appropriate to define parameters for acceptable privately developed fee studies. To this end, we strongly believe any privately developed surveys should meet the standards set forth by the Marketing Research Association Code of Research Standards and the best practices procedures of the American Association for Public Opinion Research³. Such standards will enhance confidence and provide a mechanism for adjudication should there be complaints.

Lastly, we believe it is possible for common appraisal forms (1004 Uniform Residential Appraisal Report) to be amended with a field that would request the appraiser list the actual amount paid for the performance of the appraisal. This information, coupled with additional data points that are already being incorporated into an update of the forms to identify known appraisal management companies, would make the development of a national fee study using real data a possibility. Of course, some coordination would be required on the part of several agencies, specifically, Fannie Mae, Freddie Mac, VA and the Federal Housing Administration, who utilize such forms and who may have access to such data, however, we believe it is feasible for these agencies to undertake such an effort, especially if it is encouraged by your office. We would be pleased to help with this effort if any viability exists.

We believe the options above, and/or combinations thereof, can be viable solutions to the establishment of evidentiary standards for customary and reasonable fees to appraisers. We invite the Federal Reserve to call upon our organizations and others in the development of an Interim Final Rule that can be understood and implemented by all parties involved. Please see some additional commentary on this issue several items below.

² The Fee Schedule published by the Denver Regional Office is one example
http://www.benefits.va.gov/homeloans/docs/denver_fee.pdf

³ An example is found at. http://www.aapor.org/Best_Practices/1480.htm

The Interim Final Rules On Section 1472 Appraisal Independence Should Be Broad So As To Effectively Serve The Consumer Protection Purposes of TILA:

Section 1472(a) and (b) mandate that the Federal Reserve describe, define and prohibit, by rule, acts and practices that violate appraisal independence, by anyone involved “in extending credit or in providing any services for a consumer credit transaction secured by the principal dwelling of the consumer”. Given the important consumer protection purposes of TILA, Section 1472 appropriately establishes a broad mandate which the interim final rule should reflect. In this regard, our observations and recommendations relative to the contents of the interim final rule, follow:

First, the Federal Reserve’s interim final rule should cover the conduct of “anyone involved” in extending credit or providing “any service” for a credit transaction collateralized by a principal dwelling. That would include mortgage lenders, real estate agents and brokers, Appraisal Management Companies and, we believe, those involved in purchasing collateralized mortgages for sale as securities in the secondary mortgage markets and those who rate such pools. Accordingly, the interim final rule should be drafted in a manner commensurate with Section 1472’s broad applicability and purpose;

Second, we urge the Fed, in describing or defining “acts or practices that violate appraisal independence,” to recognize that such acts and practices are not limited to those outlined in paragraphs (1) – (4) of section 1472 (b). Section 1472(b) states “For purposes of subsection (a), acts or practices that violate appraisal independence shall include...” (emphasis added). Accordingly, the conduct described in (1) – (4) is not intended to be dispositive of all the acts and practices that are unlawful under the section. Therefore, the Fed’s interim final rules should include identifiable “acts and practices”, beyond those described in (1) – (4), that reasonably can be expected to impede “appraisal independence.”

There are several acts and practices of an AMC which would, in our opinion, give rise to an “appraiser independence” violation: For example, an AMC which refuses to include an appraiser on its approved fee panel or which declines to give assignments to an appraiser on its panel, for reasons unrelated to the qualifications and competency of the appraiser, would, in our view, violate the letter and spirit of the appraisal independence provisions. An AMC which prohibits its appraisers from communicating with mortgagees or others knowledgeable about the property to be appraised or the scope of work to be performed when the appraiser believes additional information is required to comply with USPAP,⁴ also would be a violation. AMCs which require its appraisers, as a condition of their engagement, to attest that the fee being paid by the AMC is “customary and reasonable” when it clearly is not, would violate the appraiser independence provisions. The Fed’s interim final rule should encompass such conduct as well as other acts and practices by AMCs and others that impede appraiser independence.

⁴ USPAP Standard 1 states, for example: “In developing a real property appraisal, an appraiser must identify the problem to be solved, determine the scope of work necessary to solve the problem, and correctly complete research and analysis necessary to produce a credible appraisal.”

Third, Section 1472 explicitly applies to consumer credit transactions “secured by the principal dwelling of the consumer.” Given the consumer protection purpose of TILA, it seems self-evident to us that there is no legitimate public policy basis for excluding from the operation of the interim final rules any credit transaction secured by the principal dwelling.

Fourth, the broad definitions of the terms “appraiser” and “appraisal” found in TILA, HOEPA and the ECOA should be retained and adopted in the interim final appraisal independence rules. To do otherwise would result in denying the public the indispensable consumer protections intended by these statutes, including the important consumer protections added by Section 1472 to TILA. While we strongly believe that the interests of consumers and the safety and soundness of our financial institutions and housing markets are best served by a professional appraisal of property collateralizing extensions of credit, we recognize that under many circumstances, broker price opinions, automated valuation models, property tax assessments and possibly other “evaluation” products are used to value collateral property.⁵ Unless these evaluation products are covered by the interim final rules, thousands of consumers will be left vulnerable to the acts and practices which the provisions of section 1472 were specifically intended to prohibit.

In connection with the above, we strongly urge the Fed to make clear in its interim final rule that the broad definitions of the terms “appraiser” and “appraisal” adopted for TILA and other consumer protection statutes does NOT qualify those providing evaluations under the broad definitions to perform valuation services required under federal or state law or policy to be performed by individuals who are designated professional appraisers by virtue of their state appraiser certifications or licenses and their adherence to the Uniform Standards of Professional Appraisal Practice (USPAP).

Fifth, we believe the terms relating to appraiser (or “fee appraiser,” as defined in Dodd-Frank) require greater definition as it relates to the payment of customary and reasonable fees. Our interpretation of Section 129E(i) exempts both appraisers and “appraisal firms” with less than 15 contractors in a state or 25 contractors nationally from the customary and reasonable fee requirement. This is derived from the definition of “appraisal management company” found Section 1124 of the Act.

We also believe the Interim Final Rule should exempt from the customary and reasonable fee requirements appraisal firms that employ appraisers as W-2 employees, so long as they

⁵ There is abundant evidence on which we base our conclusion that professional appraisals, rather than use of BPOs, AVMs or other evaluation products, is the most certain way, by far, to protect consumers from unreliable or abusive valuation practices and to ensure that collateralized loans are underwritten in a safe and sound manner. This letter is not the most appropriate place to lay out the many reasons for this conclusion. Suffice it to say that in its efforts to foster consumer protection, Title XIV of Dodd-Frank law greatly increases reliance on professional appraisals and minimizes the role of evaluation products. Additionally, we noted with great interest, the recommendation of the Special Inspector General for TARP, in his April 20, 2010 Quarterly Report to Congress, the IG recommended as follows: “To protect against fraud, Treasury should abandon its differing valuation standards across HAMP and adopt the FHA’s appraisal standard for all HAMP principal reduction and short sale programs.... As constituted now, the program permits home valuation, the key vulnerability point for a flopping scheme, without a true appraisal, allowing estimates from brokers or other ‘independent’ providers at the discretion of the servicer...” As you know, FHA requires professional appraisals for all or virtually all of its housing guaranty programs.

do not also utilize independent appraisers in excess of the statutory or regulatory definition of an AMC. These firms should not be viewed as maintaining “panels” or “networks” of appraisers, as those terms imply an informal, third party, or contractual relationship and not an employer-employee relationship.

Clearly, the customary and reasonable fee requirement is intended to apply to traditional AMCs who maintain such networks or panels. Here, we believe the Federal Reserve should clarify that AMCs are considered “agents” of the lender whether that AMC is independent from or a subsidiary of the lender. We believe this is consistent with the HOEPA amendments developed in 2007.

Sixth, we do not believe that terms such as “coerce,” “induces” etc. require definition in the interim final rule. The terms, their public policy purpose and providing examples of prohibited acts and practices, seem to us to be sufficient;

Seventh, TILA section 129E (b)(2) – (4) describes three practices that constitute a violation of appraiser independence. We have no concerns about the inclusion of these provisions in the interim final regulations. But, as we stated earlier in this letter, it is important for the Fed to recognize that these three examples of prohibited conduct are illustrative only. The interim final regulations should go beyond the (2) – (4) language to capture acts and practices not specified in the statute which undermine appraisal independence. For example, many AMCs have imposed requirements for appraisers to attest the fee accepted is customary and reasonable, when it is not. We believe this is a clever way to intimidate an appraiser and induce reductions in fees below what may be considered customary and reasonable. As such, it would be appropriate for the Board to illustrate this as an example of a prohibited practice, and;

Eighth, New TILA section 129E (c) provides three clear exceptions to the appraisal independence requirements for the purpose of permitting users of appraisal services to engage in legitimate communications with the appraiser about his or her opinion of value. These three exceptions are straightforward and we have no concerns about them. Appraisal independence must allow for legitimate interaction between appraisers and clients, especially on complex or complicated properties where property information is essential.

Prohibitions on Conflicts of Interest: The Fed asks whether “small banks” should be exempt from the appraisal independence and anti-conflict of interest provisions of the Dodd-Frank Act. In a word, our answer is an emphatic “no”. Because many of our members operate small valuation firms, we appreciate the difficulty that small businesses sometimes experience in meeting federal and state requirements. Nevertheless, we believe that consumers whose collateralized loans are made by small banks would be ill-served by exempting those banks from the appraiser independence requirements. Clearly, mid-size and large financial institutions with in-house appraisal departments have the resources to establish “fire walls” between those departments and their mortgage production departments. If small financial institutions lack such resources, they can readily go outside the bank and hire independent appraisers. We do not believe that this represents an unreasonable requirement.

This being said, we do not believe that in-house lender appraisal departments or operations should be considered AMCs. We are aware of no state AMC registration laws that have been enacted that would require lenders to register. In fact, most existing state AMC laws specifically exclude lender in-house appraisal departments from registration requirements.

Mandatory Reporting of USPAP Violations: The Fed asks whether clarification is required in connection with new TILA section 129E(e), which requires individuals involved in a collateralized consumer credit transaction to report an appraiser's violation of USPAP, federal and state appraisal laws or who is otherwise engaging in "unethical or unprofessional conduct" to his or her state appraiser licensing agency. We strongly believe that clarification is essential if frivolous complaints against appraisers and wasted investigative efforts by state appraiser licensing agencies are to be avoided.

Our organizations support appraiser accountability. If an appraiser violates USPAP or otherwise engages in unprofessional conduct, we want these violations examined and the appraiser sanctioned if the alleged misbehavior is confirmed. However, because the language of the mandatory reporting provision is general in nature, we urge the Fed to establish specific ground rules that would govern and circumscribe the reporting of alleged appraiser misconduct. We believe that those ground rules should describe, as concretely as possible, and provide examples of, the acts of appraisers which might constitute a possible violation of the behavior addressed in the statute's mandatory reporting language. Without such guidelines, a torrent of unfounded complaints to state appraiser licensing agencies could be unleashed – based, for example, on nothing more than an appraiser's refusal to provide a desired opinion of value. Indeed, an unscrupulous user of appraisal services or even a disappointed borrower could use an unfocused and generalized mandatory reporting requirement, as a means to undermine the independence and objectivity of the appraiser.

We believe that the essential features of the Uniform Standards of Professional Appraisal Practice, including its important Ethics Rule, can be described in the interim final rule in a way that the public can understand; and that these descriptions, accompanied by examples, would be an appropriate basis for the mandatory reporting section. We also strongly believe that a time-limit of no more than 2 years from the date of the appraisal (or its receipt by the borrower) should be established in connection with the filing of complaints. Accordingly, we recommend that the interim final rule describe, with specificity and provide examples of, the acts of an appraiser that might constitute a violation of the mandatory reporting section. The rule should also set a time-limit for the filing of complaints.

No Extension of Credit If Creditor Knows Of An Appraisal Independence Violation: We urge retention of the Board commentary under its 2008 HOEPA rulemaking that "reasonable diligence" is achieved by obtaining another appraisal. We do not believe that an AVM – given its obvious limitations in terms of atypical properties and its inability to reflect the condition and other unique features of properties – is an appropriate basis for meeting a "reasonable diligence" test. More specifically, if an error occurred in the ordering function, a conversation should occur between the appraiser and the lender (non-production staff) to determine whether any special instructions were provided to the appraiser. If special instructions were provided resulting in a potential appraisal independence violation, a full interior and exterior appraisal should be ordered.

It should also be noted that under USPAP's "Scope of Work" Rule, a professional appraiser has broad flexibility to determine the appropriate scope of work for an appraisal review or for an appraisal consulting assignment. A full re-appraisal of property (and its associated costs) often will not be required for the creditor to meet the "reasonable diligence" standard based on the second appraiser's less costly limited scope of work.

Additional Comments On Customary and Reasonable Appraiser Fees: Our experience is that the increasing dominance of AMC-ordered appraisals in the home finance marketplace has, in many cases, produced the anomalous result of a significant "cram down" of fees paid to residential appraisers with a simultaneous increase in the overall cost of the appraisals themselves. Another unwelcome consequence of the current AMC dominated system is that there has been a major loss of transparency with respect to the cost of an appraisal. In today's marketplace, consumers most often do not know how much of the appraisal fee they pay goes to the individual appraiser who performs the appraisal and how much goes to the AMC for its administrative services. While we acknowledge that AMCs can provide useful administrative functions for lenders in connection with the appraisal process, the current system undermines cost transparency and is driving many of the most experienced and talented appraisers either out-of-business altogether or out of the business of providing mortgage-related residential appraisals. Section 1472 was intended to correct these serious deficiencies.

We are convinced that if effectively implemented in the interim final rules, new TILA section 129E(i) will have a major beneficial impact on the mortgage and housing markets by permitting the most experienced and highly qualified residential appraisers to continue to provide their valuation services; and, by increasing appraisal cost transparency.

It is obviously important that fees paid to appraisers by AMCs or other third parties; and fees influenced by AMC fee schedules even when an AMC has not been involved in the ordering process,⁶ be excluded in any studies or data the Fed utilizes to establish "customary and reasonable" fees.

We urge the Fed, in its interim final regulations, to require that when an appraisal is procured through an AMC or through any other third party, that consumers are provided with clear and timely information on how the appraisal fee is to be split between the appraiser and the AMC or other third party. The consumer is entitled to such transparency. While we continue to seek clarification from HUD/FHA that under RESPA, the portion of appraisal fees collected by AMCs are, in reality, loan origination costs and should not be reported on the Appraisal line of the HUD-1 form, we strongly urge that the interim final rule require creditors to provide clear and timely information to consumer-borrowers showing appraisal costs broken-out between the fee actually paid to the appraiser and the administrative fee paid to the AMC.

The Federal Reserve also asked for our experiences with the FHA "customary and reasonable" policy. With regard to FHA, we were pleased to see the agency correct its previous policy (Mortgage Letter 97-46), which placed an inadvertent cap on fees paid to appraisers. In essence,

⁶ For example, in a marketplace where AMC-ordered appraisals dominate or are significant, fees offered a residential appraiser directly by a lender could well be reduced to match the fees paid by the AMCs.

FHA's previous policy co-mingled the appraisal and the appraisal management functions as one, prohibiting lenders from charging consumers more than what is customary to the appraiser when an AMC is used. With the issuance of Mortgagee Letter 09-28, FHA corrected this to clarify that there are two fees and two services being performed. Unfortunately, no strong definition for what constitutes a customary and reasonable fee to appraisers was included, leaving appraisers subject to the pricing pressures found in the convention market. Therefore, we have not seen any adjustment in fees to "customary and reasonable" rates.

As stated above, the VA fee schedule works very well for VA appraisers, generally. It is a fair system that is developed by surveying local appraisers. We encourage the Board to recognize the VA schedule in the Interim Final Rule.

One area that requires attention is the need to update the fee schedule on a regular basis. This is especially important given the significant surge in "scope creep" reported by our members in recent months. Often, lenders and/or AMCs make special requests or have specific criteria that are unique to their operations that must be adhered to by the appraiser. Markets can move quickly and regular and ongoing surveying of fees will be important to avoid any lag and variances caused by differences in scope of work. The VA updates its schedule on a periodic basis, about once a year. Private research reports performed in accordance with standards can be updated far easier.

Finally, we strongly oppose the recommendation of one interest group that the Federal Reserve delay promulgating interim final rules to implement the "customary and reasonable fee" provisions of the statute. We believe that delaying implementation would violate the clear words of the statute which state that "for purposes of this section," the Fed shall prescribe interim final regulations no later than 90 days after the date of enactment of this section..." (emphasis added). The "customary and reasonable fee" provision (129E(i)) is a part of "this section" (i.e., section 1472).

Our organizations would be pleased to lend their valuation expertise and experience to the Federal Reserve not only in connection with its promulgation of the interim final rules but also at any future time when appraisal issues are being considered by the Agency. Thank you again for your interest in our views. If you have any questions or need additional information, please contact the American Society of Appraiser's government relations representative in Washington, DC, Peter Barash (202-466-2221; peter@barashassociates.com); Bill Garber, Director of Government and External Relations for the Appraisal Institute (202-298-5586; bgarber@appraisalinstitute.org); or ASA's Director of Government Relations, John Russell (703-733-2103; jrussell@appraisers.org).

Sincerely,
American Society of Appraisers
Appraisal Institute
American Society of Farm Managers and Rural Appraisers
National Association of Independent Fee Appraisers

Cc: Sandra Braunstein, Director
Division of Consumer and Community Affairs
Federal Reserve Board