



THE APPRAISAL FOUNDATION

*Authorized by Congress as the Source of Appraisal
Standards and Appraiser Qualifications*

December 22, 2010

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

**RE: Docket No. R-1394
RIN No. AD-7100-56**

Dear Ms. Johnson:

The Appraisal Foundation sincerely appreciates the opportunity to comment on the interim final rule comprising 12 CFR Part 226.

The Appraisal Foundation, the Congressionally-authorized source of appraiser qualifications and appraisal standards in the United States, greatly applauds the spirit of the rule and its general intention to enhance appraiser independence. We believe the vast majority of the interim final rule assists in accomplishing that objective.

There are a few aspects of the interim final rule on which The Appraisal Foundation would like to comment. Specifically:

Paragraph 42(b)(1) *Examples of Covered Persons*

In response to the Board's solicitation for comment on "whether some settlement service providers should be exempt from some or all of the interim final rule's requirements," The Appraisal Foundation feels exclusion of any parties under RESPA could have a diluting effect on transparency in the financial transaction.

In addition, although parties such as those identified in the interim final rule (i.e. those providing "credit reports, legal services, document preparation, real estate surveying, and pest inspection") may "have little opportunity or incentive to coerce or influence an appraiser," that possibility, albeit less likely, may still exist. The Appraisal Foundation sees no reason to exempt any such parties from the final rule if appraiser independence is truly an objective.

Paragraph 42(b)(3)(2) *Automated Model or System*

In response to the Board's solicitation for comment on "the exclusion of automated valuation models from the definition of 'valuation,'" The Appraisal Foundation believes that exclusion of Automated Valuation Models (AVMs) from the definition could lead to potential confusion and abuse under the final rule. In many cases, AVMs are developed and/or "approved" by appraisers or other individuals identified in the interim final rule as those preparing "valuations."

On the other hand, AVMs that are developed by those who do *not* normally prepare "valuations" may not be reliable and/or may be used in a manner in which they were not intended.

Paragraph 42(c)(1)(2) Purpose

The Appraisal Foundation applauds the provisions that clarify the three practices that would *not* be considered violations of the interim final rule:

- (1) Consider additional, appropriate property information, including information regarding additional comparable properties to make or support an appraisal;
- (2) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or
- (3) Correct errors in the appraisal report.

The Appraisal Foundation believes that meaningful communication between the appraiser and a creditor are an invaluable aspect of the valuation process. Without the provisions identified above, it could remain unclear whether such communication would be permitted.

Nevertheless, we urge extreme caution regarding the first item listed above. It must be unequivocally clear to both the appraiser and the creditor in the final rule that the purpose of considering the additional information is *not* to unduly influence the appraiser. Without such clarity, The Appraisal Foundation believes the other provisions of the interim final rule that address appraiser independence may be greatly reduced.

Paragraph 42(c)(1)(4) Indirect Acts or Practices

The Appraisal Foundation supports the prohibitions against appraiser coercion identified in the interim final rule; however, we believe there is one glaring omission. The language included in this paragraph includes "it is a violation to threaten to withhold **future** business from a title company affiliated with an appraisal management company unless the valuation ordered through the appraisal management company assigns a value to the consumer's principal dwelling that meets or exceed a minimum threshold." (Bold added for emphasis)

While the interim final rule appears to include adequate provisions to ensure appraisers are paid for a specific assignment without regard to the results, the language quoted above that prohibits threatening to withhold *future* business appears to only apply to title companies. The Appraisal Foundation believes it is imperative to include such a prohibition for the appraiser as well. There have been countless documented cases over the years where appraisers have simply not been provided with future business (i.e. "blackballed") if they failed to meet or exceed a "target number" stated by a creditor. Including such a provision for title companies but excluding appraisers in the final rule would likely have a dramatically negative impact on appraiser independence.

Paragraph 42(f)(1)(3) Failure to Perform Contractual Obligations

In response to the Board's solicitation for comment on "whether the Board should specify particular types of contractual obligations that, if breached, would warrant withholding compensation," The Appraisal Foundation is of the opinion that the final rule should not attempt to include any such requirements. Contractual laws are well-established within local, state and federal jurisdictions, and The Appraisal Foundation believes the civil remedies that currently exist should address any contractual disputes.

Paragraph 42(f)(1)(5) *Volume-based Discounts*

In response to the Board's solicitation for comment on "whether further guidance is needed concerning the permissibility of volume-based discounts," The Appraisal Foundation believes that the final rule should include clear guidance on this topic. It is our belief that within the realm of "reasonable and customary fees," appraisers should have the ability to adjust their fees based on the volume of valuation activity they incur with one or more creditors. A failure to clearly address this issue could raise questions of "price-fixing" or other monopolistic issues.

Paragraph 42(f)(2)(i)(2) *Identifying Recent Rates*

In response to the Board's solicitation for comment on "whether additional guidance regarding how creditors may identify recent rates" and "views on what guidance in particular may be helpful," The Appraisal Foundation believes a potential source for a comprehensive fee survey may be available through the *National Registry* of the Appraisal Subcommittee.

Although the *National Registry* does not include the names of every person that would be eligible to perform valuations under the interim final rule, it does include the name and contact information of every state-licensed and state-certified real estate appraiser in the United States. A well-designed fee survey, which could incorporate local and regional demographics, could potentially be developed and published as a reliable source.

Paragraph 42(f)(2)(i)(C) *The Time in Which Appraisal Services are Required to be Performed*

The Appraisal Foundation strongly endorses the position that speed or "turnaround time" should not be the primary basis for engaging an appraiser. We concur that "appraiser competency and accurate appraisals should be a creditor's chief concerns."

Paragraph 42(f)(2)(i)(D)(2) *Fee Appraiser Qualifications*

In response to the Board's solicitation for comment on "whether the final rule should expressly prohibit basing an appraiser's *compensation* on an appraiser's membership or lack of membership in a particular appraisal organization," The Appraisal Foundation is of the opinion that appraisal fees should be based on the surveys and other sources identified in the interim final rule, and should not be connected, in any manner, to an appraiser's membership or lack of membership in a professional appraiser organization.

Paragraph 42(g)(1)(1) *Mandatory Reporting*

In response to the Board's solicitation for comment on "whether reporting should be required only if a material failure to comply causes the value assigned to the consumer's principal dwelling to differ from the value that would have been assigned had the material failure to comply not occurred by more than a certain tolerance, for example, by 10 percent or more," The Appraisal Foundation believes such guidance in the final rule would be a grave error.

Over many years, there have been numerous examples of appraisals where the opinion of value was "reasonable," but the appraiser may have concluded to that opinion *without* complying with USPAP and/or recognized valuation methods and techniques. To imply that a valuation would only have to be reported if the opinion of value was off by, say 10 percent, could have a dramatically negative impact on public trust in the appraisal profession.

Jennifer J. Johnson
December 22, 2010
Page 4 of 4

RE: Docket No. R-1394
RIN No. AD-7100-56

Paragraph 42(g)(1)(1) Mandatory Reporting

The Appraisal Foundation believes the interim final rule adequately addresses the circumstances under which a creditor must file a complaint against an appraiser deemed to have violated applicable portions of the rule. However, we feel strongly that a corresponding requirement should exist for *appraisers* to have the ability to report *creditors* who violate any of the appraiser independence requirements contained within the rule.

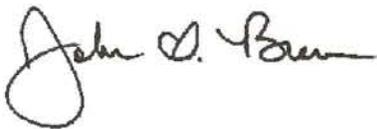
Absent such an addition to the final rule, reporting of violations would be a “one way” path; a similar pathway is needed for appraisers to report creditors.

Paragraph 42(g)(2) Timing of Reporting

In response to the Board’s solicitation for comment on “what constitutes a reasonable period of time within which to report a material failure,” The Appraisal Foundation feels that 90 days would be reasonable. Such a time frame should be sufficient for any creditor to submit the complaint to the appropriate state appraiser regulatory agency, and would be recent enough to allow the state to take appropriate action in a timely manner.

Again, we appreciate the opportunity to have commented on the interim final rule. We are available to answer any questions with respect to our comments, or provide any additional information you may request.

Best Regards,



John S. Brennan
Director of Appraisal Issues
The Appraisal Foundation
(202) 624-3044
john@appraisalfoundation.org



David S. Bunton
President
The Appraisal Foundation
(202) 624-3040
david@appraisalfoundation.org