M·B·R·E·A
REAL ESTATE VALUATION PROFESSIONALS

December 22, 2010

Via mail and email

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 and RIN No. AD-7100-56 – Truth in Lending Interim Final Rule

Dear Ms. Johnson,

The Massachusetts Board of Real Estate Appraisers (MBREA) appreciates the opportunity to provide comments on the Federal Reserve System's (Board) Interim Final Rule (Rule) promulgated as required under the Dodd-Frank Wall Street Reform Act (Act)

The MBREA is a not-for-profit association founded in 1934 for the purpose of supporting and advancing the profession of appraising. We are one of eight appraisal organizations, and the only local association, to be accorded the status and privilege of sponsor of the Appraisal Foundation, an organization authorized by Congress as the source of appraisal standards and appraiser qualifications. Our membership includes appraisers from Massachusetts and other New England states.

We are limiting this comment letter to a discussion of "Customary and Reasonable Compensation", Section 226.42(f) of the Rule.

Customary and reasonable compensation for appraisers is an appropriate and critically important subject to discuss in the context of appraiser independence. There is a direct correlation between the recent advent of appraiser independence requirements by the GSEs and the significant reduction in compensation received by appraisers. These issues are inextricably woven together no matter how the matter is examined. A valid question for the Board's consideration is whether compensating appraisers at a significantly lower rate is counterproductive to the goals of greater appraiser independence and higher quality appraisals.

990 Washington Street, Suite S-302 • Dedham, MA 02026-6719 • Tel. (781) 329-1996 • Fax (781) 329-1998 • mbrea.org

Some believe that paying customary and reasonable fees will result in increased costs to consumers. Seldom have we witnessed the introduction of a regulation that has not resulted in increased costs to either the regulated or the one being protected by the regulation. An appropriate question is who should shoulder compliance costs? Financial institutions routinely pass along to consumers the costs of regulatory requirements, including, Truth in Lending, RESPA and the Community Reinvestment Act. Why should that not be the case when it comes to increased appraisal regulation directed at these same institutions?

The appraisal profession is at a crossroads. The profession is rapidly graying and we are not witnessing a "next" generation of appraisers emerging. When we examine why the profession is not attracting young professionals, the central issue is financial. A trainee appraiser spends several thousand dollars on education to qualify for a residential license or certification. More significant, a trainee spends at least two years working under the direct supervision of a certified appraiser before qualifying for a license or certification. There is not sufficient room in today's fees for an appraiser to support her own operation and compensate a trainee at the same time. Customary and reasonable fees will strengthen appraisers, give them the financial ability to train new appraisers, attract better talent and increase quality. The consequences are grave if we ignore the law's intent.

Appraisers as a group are entrepreneurial small business professionals who believe in the power of the free market to determine the value of their services and, correspondingly, what fees they should be able to charge. The free market for appraisal services worked quite well until April 30, 2009. On May 1 of that year, Fannie Mae and Freddie Mac implemented the Home Valuation Code of Conduct (HVCC) intended to increase the independence of appraisers from undue coercion and influence in the performance of their duties. The HVCC required lenders to erect a "firewall" between loan origination activities and the appraisal process. One means to creating the compulsory separation of functions was to employ a third-party agent, also known as an appraisal management company (AMC), to act as a go-between the lender and the appraiser.

The Board should be skeptical of claims AMCs provide an honest broker function in the procurement of appraisal services. The Board may not be aware that the genesis of the HVCC was an investigation being conducted by the New York Attorney General into alleged collusion between Washington Mutual and its AMC, eAppraiseIT (now known as CoreLogic). The Attorney General discovered a series of email exchanges between officials at both organizations that strongly indicated a pattern of abuse of the appraisal process, including improper coercion of appraisers. Attorney General Cuomo subsequently brought a lawsuit against eAppraiseIT and its former parent in the Supreme Court of the State of New York. Soon thereafter, the Attorney General broadened the scope of the investigation to include the GSEs. The GSEs quickly settled with the Attorney General by adopting the HVCC. The lawsuit against eAppraiseIT and its former parent company continues to be pursued.

The Board should note that appraisers are subject to significant pressure from AMCs to complete appraisal assignments in extraordinarily short periods of time. Demands for completed appraisals in 24 to 72 hours fail to provide an appraiser with sufficient time to properly research the market and develop a credible report. It may be true appraisals are being rushed to completion more quickly because of AMCs, but not without a resultant compromise in quality.

The HVCC became an artificial force that ultimately obstructed market-driven determination of what constitutes customary and reasonable compensation for residential appraisal services. Faced with lender established ceilings on the amount of appraisal fees that could be charged to consumers, AMCs bifurcate the consumer paid appraisal fee by taking one-third or more for themselves. With their near monopolization of the residential appraisal process, AMCs have successfully forced appraisers to accept drastically lower fees for appraisal services or have no work at all. Contrary to the belief of some, appraisers have not willingly set their prices lower because AMCs provide cost-reducing efficiencies. Any efficiency provided is to the sole benefit of the lender (often the parent of the AMC) and the AMC. In fact, appraisers consistently report frustration dealing with the often poorly trained staff of an intermediary and the resultant disconnect from the client/intended user of the appraisal.

What is customary and reasonable compensation for appraisal services? According to the Dodd-Frank Wall Street Reform Act, customary and reasonable compensation "...exclude(s) assignments ordered by known appraisal management companies." If we follow Congress's indisputable intent by excluding assignments ordered by AMCs, customary and reasonable compensation is then truly market driven. There are two primary sources of non-AMC orders for appraisal services: 1) appraisals ordered by financial institutions that established HVCC compliance without employing AMCs, and 2) non-lender assignments such as appraisals performed for divorce, estate settlement, etc. It is with these and similar non-AMC appraisal assignments that the economic principle of supply and demand is free to operate without interference with market rates for appraisal services readily visible.

Congress intended for appraisers to receive "...customary and reasonable compensation for appraisal services performed in the market area of the property being appraised." Further, as stated above, Congress defined a critical step in determining what is customary and reasonable by excluding fees associated with "assignments ordered by known appraisal management companies." MBREA appreciates the necessity of clarifying "market area" but we fail to detect any ambiguity in the Act's requirement that "assignments ordered by known appraisal management companies" be excluded. **For this reason, the MBREA firmly believes the Board exceeded its authority when it included a "presumption of compliance" that did not include the clearly stated intent of Congress to exclude AMC assignment orders.**

At first blush, it appears there are several components to the customary and reasonable requirement that require extensive guidance – the determination of market area, whether rates are recent or not and how rates should be determined. However, there is one solution indirectly referred to in the Act that addresses all three issues without creating bureaucracy or requiring extensive studies or surveys. **MBREA believes the Rule should establish a separate and irrefutable presumption of compliance if the lender or its agent utilizes the most recently published Veterans Administration (VA) appraisal fee schedule for the region where the property being appraised is located.** Since each region of the VA, a government agency, publishes a fee schedule delineating the region by market and assigning a fee to each type of residential property to be appraised, this approach gives lenders and their agents a simple, yet assured approach to compliance. Lastly, its use as a presumption of compliance is appropriate within the Rule due to the Act's language that "government agency fee schedules" are an acceptable means for determining customary and reasonable.

A related issue arising from the Rule is an inconsistent definition of "fee appraiser" when compared to the language contained in the Act. TILA Section 129E(i)(2)(B) defines a fee appraiser as, "...a company 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.) that utilizes the services of State licensed or certified appraisers and receives a fee for performing appraisals in accordance with the Uniform Standards of Professional Appraisal Practice." The Rule transformed the Act's definition to read, "An organization that, in the ordinary course of business, employs state-licensed or state-certified appraisers 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.)."

At issue is the substitution of the word "employ" for the phrase "utilizes the services of" contained in the Act. The Rule's summary, in discussing its definition states, "The Board understands, however, that these companies or firms often pay their appraisers on an hourly basis and provide their employees with office services as well as health insurance and other employment benefits." We can assure you this is not the norm for most appraisal companies in the Northeast and elsewhere. Appraisers, like real estate sales professionals, largely work together as independent contractors and not in employer/employee relationships. This allows individual appraisers to receive work from multiple sources including other appraisers or directly from clients.

The Act's appraisal management company definition distinguishes between a company that is a fee appraiser and one that is an appraisal management company with a trigger consisting of the number of certified or licensed appraisers on the company's network or panel. According to the statutory definition added to FIRREA by the Act, an AMC is a company that "...oversees a network or panel of more than 15 certified or licensed appraisers in a State or 25 or more nationally within a given year." The Rule's TILA definition of an appraisal management company omits the de minimis of 15 and 25 thus eliminating a safe haven for fee appraiser organizations (FAO) when it comes to paying customary and reasonable compensation. In fact, the absence of the de minimis relegates the notion of a FAO as meaningless.

It is customary for an AMC to assign orders to a FAO. The FAO often performs functions similar to those of an AMC, but on a much smaller scale. The FAO assigns an order to an appraiser on its -- for lack of a better word -- panel and typically splits the fee received from the AMC. With the de minimis in place, a FAO may continue this practice. Without the de minimis, a FAO is now considered an AMC and is required to determine what is customary and reasonable in the market and compensate the appraiser accordingly.

MBREA believes the ambiguity created by a definition of fee appraiser in the Rule that is different from one contained in the Act is not beneficial to compliance and we encourage the Board to adopt the language from the Act.

To recap, the MBREA asks the Board to incorporate the following changes to the Rule

- **Any presumption of compliance, except when the lender or its agent adopts the VA fee schedule, included in the Rule must comply with the Act by excluding fees associated with "assignments ordered by known appraisal management companies" and,**
- **Establish a separate and irrefutable presumption of compliance by lenders and their agents when they base compensation for appraisal services on the most recent appraisal fee schedule published by the regional office of the Veterans Administration for the state in which the property to be appraised is located.**
- **Substitute the phrase "utilizes the services of" for the word "employ" in the definition of a company that is a fee appraiser and add in the de minimis of 15 and 25 appraisers to the definition of an appraisal management company.**

The MBREA appreciates the opportunity to submit comments about customary and reasonable compensation for appraisers on behalf of the professional appraisers who are members. We are available to discuss our comments with you. Please feel free to contact MBREA's Executive Vice President, Stephen Sousa by telephone at 781-329-1996 or by email to steve@mbrea.org.

Sincerely,

Gary D. Minnehan

Gary Minnehan, RA
President