MORTGAGE BANKERS ASSOCIATION
Investing in communities

December 21, 2010

Ms. 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 Mortgage Bankers Association (MBA)[1] appreciates the opportunity to comment on the interim final rule ("the Rule") issued by the Board of Governors of the Federal Reserve System ("Board") on October 28, 2010. The Rule amends the Board's Regulation Z (Truth in Lending) by implementing appraisal-related requirements in section 1472 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). The Rule is effective as of December 27, 2010, although compliance is optional until April 1, 2011. Upon its effective date, the Rule will implement several key provisions, including requiring appraisers to be paid "customary and reasonable fees."

MBA generally supports the Rule and commends the Board for its thoughtful approach to implementing the appraisal-related requirements of the Dodd-Frank Act, notwithstanding the statute's abbreviated deadline. We also appreciate the opportunity to share our perspectives on this important issue with Board staff prior to the Rule's issuance. We believe this method of gathering preliminary input regarding the Rule's initial contours is a contributing factor to the Rule's overall workability. We encourage the Board to maintain this approach during future rulemakings.

We believe the Rule comports with many of MBA's principles for fostering the validity of property valuations and ensuring the integrity of those who conduct such valuations. MBA believes the Rule will help to minimize opportunities for fraud, coercion or undue

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

1717 Rhode Island Avenue, NW | Washington, DC 20036 | www.mortgagebankers.org | (202) 557-2700

influence; ensure that appraisers conduct property valuations in a manner that is free from the influence of any party to a real estate transaction that has a financial interest in its outcome; and maintain lender options with respect to the use of independent appraisers, appraiser or vendor management companies, and in-house appraisal staff.

In regards to the Rule's provisions regarding "customary and reasonable" fees, MBA strongly agrees with the Board's determination that the marketplace should be the primary determiner of the value of appraisal services. The method proposed by the Board in the Rule is logical, fair, and objective. This approach best protects consumers from excessive fees and allows the marketplace to find and create efficiencies which ultimately result in lower consumer borrowing costs. Importantly, MBA believes that the Rule imposes minimal compliance and implementation challenges, and is likely to be compatible with market fluctuations, thus obviating the need for continuous rulemakings. Nevertheless, MBA recommends a series of minor clarifications to the Rule in order to further facilitate compliance. MBA's recommendations are described in further detail below.

<u>Request for Clarification</u>

MBA respectfully submits requests for clarification in several areas of the Rule.

First, we request clarification that an agent of a creditor may review the factors specified in § 226.42(f)(2)(i) of the Rule that may require a fee adjustment and make any appropriate adjustments. Without this clarification, the Rule could be interpreted to mean that the review may only be performed by the creditor even if an agent of the creditor is in a better position to do so.

Second, MBA believes it is unclear whether valuations prepared in connection with loss mitigation activities fall outside the scope of the Rule. MBA notes that entities performing servicing functions are not subject to the Truth in Lending Act ("TILA") because they are not included under TILA's definition of "covered persons." Additionally, none of the activities listed below are conducted by a covered person engaging in a "covered transaction" under TILA (i.e., an extension of credit secured by the consumer's principal dwelling):

- Ownership of REO properties,
- Completion of short sales, or
- Deed-in-lieu transactions.

Accordingly, we would appreciate confirmation that loss mitigation activities fall outside the scope of the Rule.

Third, we request clarification about whether the 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.

Fourth, comment 42(f)(2)(i)-2 provides that creditors and their agents may, but are not required to, use or perform a fee survey as part of the process of gathering information about "recent rates" under the first presumption of compliance with the customary and reasonable compensation requirement for fee appraisers. If a creditor or its agent elects to use and rely on a survey in this manner to establish customary and reasonable compensation, MBA would like clarification that, subject to applicable antitrust issues, the creditor or its agent may utilize fee survey data from transactions that occurred during the previous 12-month period to establish its compensation for fee appraisers for the subsequent 12-month period.

Conclusion

MBA appreciates the Board's efforts to improve the validity and reliability of property valuations by ensuring appraisals are conducted in an environment free from undue influence or coercion. We look forward to working with you in the future on this very important issue. Please contact Tamara King at (202) 557-2758 or tking@mortgagebankers.org if you have any questions.

Sincerely,

John A. Courson

John A. Courson
President and Chief Executive Officer
Mortgage Bankers Association