WELLS FARGO

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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
Federal Reserve Board Amendment to Regulation Z: Appraisal Independence Requirements
12 CFR Part 226

Dear Ms. Johnson:

The Federal Reserve Board (Board) published Interim Final Rule R-1394 (the Rule) on October 28, 2010, to establish new appraisal independence requirements for consumer credit transactions secured by a consumer's principal dwelling. The Rule seeks to establish a set of new requirements to eliminate improper influences that can compromise the objective development of property valuations. The Rule also requires creditors and their agents to compensate fee appraisers for their appraisal services at a rate that is customary and reasonable. Appraisal accuracy depends on effective safeguards that allow appraisers to exercise independent judgment without exposure to the undue influence of interested parties. Effective safeguards require clearly defined roles and responsibilities that promote independence without eliminating appropriate and productive communication. Wells Fargo appreciates the opportunity to submit written comments to the Board on the Rule, and respectfully requests that the Board consider adopting the suggestions set forth herein.

Wells Fargo's comments are summarized in the following categories:

A. The Scope of the Rule

The Rule should only apply to consumer credit transactions secured by a consumer's principal dwelling when the credit transaction triggers an obligation to issue a new consumer disclosure under the Truth in Lending Act (TILA).

Wells Fargo is concerned that the Rule expands Section 129E(g)(2) of TILA beyond the scope prescribed by Congress to cover non-appraisers and non-appraisals and recommends the Board remove "valuation" and replace with "appraisal."

B. Conflict of Interest – Safe Harbor Provisions

The third safe harbor should not preclude a creditor's risk or vendor management department from receiving reports of appraiser misconduct from loan production personnel, as long as the decision to remove an appraiser is made solely by the risk or vendor management department and not the loan production unit.

Wells Fargo urges the Board to provide an exemption from the second and third safe harbor requirements in limited instances where a creditor operates a branch site in a remote location, such as rural Alaska, and the complete separation between the loan production process and the creditor's collateral valuation program would be impractical to maintain. Please refer to the detailed qualification criteria in Appendix B.

Wells Fargo requests clarification that a conflict of interest will not arise if an employee reports to a senior manager who also oversees loan production functions but the employee does not perform that function him or herself.

C. Coercion

Wells Fargo recommends that Board Comment 42(c)(1)-1 be clarified to provide that the terms used for the enumerated prohibited actions should only have the meaning given to them by the specific state laws that **expressly** regulate appraisals, appraisers, and appraisal management companies.

While Wells Fargo would ultimately support an effort to prohibit coercion in the development of an automated model or system, we believe that any subsequent requirement to deliver a copy of an automated valuation model to a consumer should be avoided because the content contained in the automated valuation model is difficult to discern and would likely contribute to consumer confusion.

D. Customary and Reasonable Fees

Wells Fargo urges the Board to amend the first presumption of compliance by replacing the broad reference to anticompetitive acts with an enumerated list of acts or practices that will eliminate the presumption of compliance. Please refer to Appendix D for a list.

Wells Fargo urges the Board to expressly state that a document signed by the parties indicating that a particular fee payment is customary and reasonable will be probative when determining the parties' intent. The Board should also specify whether the parties should develop and retain other documentation to reflect the considerations that were made in reaching an agreement on a customary and reasonable fee.

Wells Fargo appreciates the opportunity to provide comments.

Respectfully,

Michael J. Heid
Co-President
Wells Fargo Home Mortgage

Appendix Materials

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Appendix A – The Scope of the Rule

According to Section 226.42(a), the Rule applies to any consumer credit transaction secured by the consumer's principal dwelling. Wells Fargo believes that this stated scope is overly broad, and recommends that the Rule should not apply to certain servicing-related activities that are intrinsically beneficial to consumers, such as loan modifications, workouts, and other activities that do not impose additional obligations on the consumer. A more narrow application of the Rule will help to ensure that creditors won't be discouraged from providing loan modifications, workouts, or other alternatives to consumers who are at risk of losing their home, and who may not have other available credit options. Wells Fargo recommends that the Rule should only apply to consumer credit transactions secured by a consumer's principal dwelling when the credit transaction triggers an obligation to issue a new consumer disclosure under the Truth in Lending Act (TILA).

Rule Section 226.42 applies the independence safeguards, with the exception of fee appraiser compensation and mandatory reporting requirements, to any estimate of value that is not solely the product of an automated model or system. Wells Fargo is concerned that the Rule expands Section 129E(g)(2) of TILA beyond the scope prescribed by Congress to cover non-appraisers and non-appraisals. Although Section 129 E(g)(2) authorizes the Board to adopt an interim final rule that defines the acts and practices that violate appraisal independence, the acts or practices expressly enumerated in Section 129 E(b)(2) only refer to appraisals. Provisions that expressly reference broker price opinions, automated valuation models, and valuations in general are not contained in Section 129 E(g)(2). Because the Rule adopts a new definition for the term 'valuation' but does not define the term 'appraisal' to include 'valuation,' the Rule would appear to extend beyond the scope of congressional intent. Wells Fargo urges the Board to amend the Rule by removing the terms 'valuation,' 'persons who perform valuations,' 'valuation management functions,' 'persons who perform valuation management functions' and replacing them with 'appraisal,' 'appraisers,' 'appraisal management services' and 'appraisal management companies.'

Appendix B – Conflict of Interest – Safe Harbor Provisions

The Board has solicited comment on Rule Section 226.42(d)(2). This section establishes three safe harbor conditions that, if met, will enable a person employed by or affiliated with a creditor with assets of more than $250 million to prepare an appraisal or perform an appraisal management function in connection with a covered transaction originated by the creditor without violating the conflict of interest prohibition. In particular, the Board has solicited feedback on the appropriateness of safe harbor provisions.

The conditions enumerated in the third safe harbor provision are broad and should be clarified. First, the third safe harbor provision should allow a person within the creditor's loan production function to submit conduct or incident reports to the creditor's credit risk department, vendor management department, or fraud risk management department to determine whether the appraiser's conduct warrants the removal of the appraiser from a list of approved appraisers. Loan production personnel may discover appraiser misconduct that could subject a creditor to future risks if the appraiser is subsequently retained. If the creditor assigns all reports of misconduct to a group that is independent of the creditor's loan production function, then any decision by the creditor's credit risk department, vendor management department, or fraud risk management department to remove the appraiser from a list of approved appraisers should not be construed to constitute indirect influence that would jeopardize the third safe harbor provision.

Second, the phrase "influencing the selection of the person to prepare a valuation [appraisal] or perform a valuation management function [appraisal management function]" should be read to preclude any person who is part of a creditor's loan production function. However, it should not be construed to preclude such persons from communicating general observations about overall vendor performance to members of the creditor's vendor management department. General observations about overall vendor performance that do not concern individuals, or individual orders or transactions should not result in a violation of appraisal independence requirements.

Third, Wells Fargo urges the Board to provide an exemption from the second and third safe harbor requirements in limited instances where a creditor operates a branch site in a remote location, such as rural Alaska, and the complete separation between the loan production process and the creditor's collateral valuation program would be impractical to maintain. In limited instances, where an institution can demonstrate that absolute lines of independence cannot be achieved without significant hardship, an institution should be able to qualify for safe harbor eligibility under the second and third safe harbor conditions by demonstrating that prudent safeguards are in place to ensure that the value assigned to a covered transaction is not based on any factor other than the independent judgment of the person assigning the value. To qualify for this exemption, an institution should be required to demonstrate that: (1) any other valuation product that can be performed with complete independence is not permitted for use on the property in question, or is otherwise cost/time prohibitive; (2) the transaction involves a low dollar loan amount; (3) loan officers or other creditor personnel who vote on, approve, or are otherwise directly involved in the assessment of a particular loan have not engaged in any act in connection with the determination of the property's market value; and (4) the creditor's credit policy department has performed a pre-funding review of the property's assigned market value and confirmed the adequacy of the methodology used, and verified that the assigned value isn't based on any factor other than the independent judgment of the person who assigned the market value.

Fourth, Board Comment 42(d)(5)(i)-1 clarifies that "loan production function" shall include retail sales staff, loan officers, and any other employee of the creditor with responsibility for taking a loan application, offering or negotiating loan terms or whose compensation has been based on loan processing volume. The Comment further clarifies that any person who is solely responsible for credit administration or risk management is not considered part of a creditor's loan production function. Wells Fargo urges the Board to clarify the comment further by specifying that an employee who indirectly reports to a corporate officer or senior manager whose scope of authority also includes loan production functions, but who does not him/herself perform a loan production function or report directly to any person who performs a loan production function, will not be classified as someone who performs a loan production function for the purpose of determining whether a conflict of interest exists.

Appendix C - Coercion

Board Comment 42(c)(1) -1 specifies that the enumerated acts or practices set forth in Rule Section 226.42(c)(1) will have the meaning assigned to them by applicable state law or contract. Wells Fargo is concerned that various sections within a state law may contain overlapping or conflicting definitions of these terms, and could impede a creditor's good faith effort to remain compliant. As a result, Wells Fargo recommends that Board Comment 42(c)(1)-1 should be clarified to provide that the terms used for the enumerated prohibited actions should only have the meaning given to them by the specific state laws that expressly regulate appraisals, appraisers, and appraisal management companies.

The Board has solicited comment on whether the Rule that prohibits coercion should apply to automated valuation models. Specifically, the Board seeks to determine whether creditors or other covered persons engage in activities for the purpose of imposing improper influence over persons who develop automated models or systems that are used to estimate the value of a consumer's principal dwelling. Wells Fargo develops and maintains automated models and systems through the corporate credit risk department. The content and methodologies that are used to manage these systems are independent from the influence of any person with a loan production function, or that would otherwise have a direct or indirect interest in the property or transaction for which the automated model or system is used. While Wells Fargo would ultimately support an effort to prohibit coercion in the development of an automated model or system, Wells Fargo believes that any subsequent requirement to deliver a copy of an automated valuation model to a consumer should be avoided because the content contained in the automated valuation model is difficult to discern and would likely contribute to consumer confusion.

Appendix D – Customary and Reasonable Fees

The Board has solicited comment on whether Rule Section 226.42(f) should define "agent" to exclude fee appraisers or any other parties. Wells Fargo does not believe that fee appraisers, or any party other than appraisal management companies that have been expressly authorized through a written contract with the creditor to manage the appraisal process on the creditor's behalf should be defined under Rule Section 226.42(f) as an agent of the creditor. Wells Fargo urges the Board to apply the definition of the term "agent" to only appraisal management companies that have been directly engaged by a creditor through a written contract to select, retain, or otherwise engage fee appraisers on the creditor's behalf. Sub-contractors or other parties with whom the creditor has not directly entered into a contractual arrangement would be beyond the direct oversight of the creditor and could not be effectively managed by the creditor through contractual enforcement and compliance protocols.

Wells Fargo strongly supports the Board's decision to adopt two methods under which a creditor can be presumed to comply with the requirement to provide customary and reasonable compensation to fee appraisers. The first presumption of compliance reflects a determination by the Board that the marketplace should be the primary determinant of the value of appraisal services, including the customary and reasonable compensation for fee appraisers. The Rule is not intended to prohibit a creditor and an appraiser from negotiating a rate for a particular assignment in good faith. However, the Board has stated that a document signed by a fee appraiser certifying that an appraiser has been paid a customary and reasonable fee does not by itself create a presumption of compliance. Wells Fargo believes that all parties to an appraisal fee arrangement should be required to negotiate the appraisal fee in good faith. To clarify this expectation, Wells Fargo encourages the Board to expressly state that creditors, creditor agents, and fee appraisers will each have a duty under the Rule to negotiate customary and reasonable fees in good faith, and that while a document signed by the parties indicating that a particular fee payment is customary and reasonable is not in itself conclusive, it will be probative when determining the parties' intent. The Board should also specify whether the parties should develop and retain other documentation to reflect the considerations that were made in reaching an agreement on a customary and reasonable fee.

The first presumption of compliance can only be achieved if the creditor and its agents do not engage in anticompetitive acts in violation of state or federal law that affect the compensation paid to fee appraisers. Wells Fargo urges the Board to amend this provision by replacing the broad reference to anticompetitive acts with an enumerated list of acts or practices that will eliminate the presumption of compliance. The list should include: price fixing; market allocation; monopolization; and any other acts or practices that are expressly defined by the Board.