23 December 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
Regulation Z Interim Final Rule, Valuation Independence

Dear Ms. Johnson:

MDA Lending Solutions, an advanced information solutions and real estate settlement services company, supports the Interim Final Rule released on 18 October 2010. Of particular interest to our business, which includes an appraisal management (AMC) component, is the concept of customary and reasonable fees for appraisal services. After correspondence with attorneys for the Division of Consumer and Community Affairs, we offer the following comments and request some further clarification from the Federal Reserve Board.

Determining fees: negotiations between AMCs and appraisers

A compliance path that allows for the determination and payment of customary and reasonable fees within a range will more accurately reflect market rates and existing practices.

The first path to a presumption of compliance established in Fed Comment 42(f)(2), which includes compensating the fee appraiser "in an amount that is reasonably related to recent rates paid for comparable appraisal services performed in the geographic market of the property being appraised," is the preferred method. Objective, third-party information, as prescribed by the second path to a presumption of compliance, can be a helpful starting point, but adhering strictly to third-party fee schedules and surveys should not be considered an adequate compliance method.

The third-party data available provides median fees as point values for certain appraisal services in particular markets. Using a point value homogenizes appraisal services and ignores the complex factors that necessarily adjust an appraisal fee from one assignment to the next. Further, the survey data available must be extrapolated to account for all appraisal services across all property sub-types in all geographic markets.

As a starting point, creditors and their agents, including AMCs, should be able to use objective third-party and/or recent rate information to estimate the range of fees that are customary and reasonable for appraisal services in geographic markets. In order to

narrow this range for a particular assignment, the factors noted in the Interim Final Rule including property type, scope of work, time in which the appraisal services are required to be performed, appraiser qualifications, experience and quality, and even considerations for volume discounting must then be considered.

A dynamic offer-and-acceptance process between an AMC and an appraiser is crucial to arriving at a fee that is customary and reasonable for a particular assignment.

A local appraiser is often more familiar with the subject property's market than a lender or AMC, and he or she is usually in a better position to know what scope of work will be required. An offer-and-acceptance process, whereby the appraiser's local knowledge is applied, is essential to incorporating the adjustment factors pursuant to the first path to compliance.

We support the market-based solution to determining customary and reasonable fees contained within the Interim Final Rule.

Hundreds of lenders and AMCs and tens of thousands of appraisers are operating within the current market. A compliance path that allows appraisers, creditors and AMCs to negotiate customary and reasonable fees within a range (as opposed to a median or some other point value) preserves appraiser independence, as appraisers are free to negotiate fees; protects the consumer, as fees are allowed to fluctuate in real time with no single party exerting unilateral control; and reduces the need for further amendments under TILA, as deference to the existing market requires limited additional regulation.

We agree with extending appraisal independence requirements to all valuations producers.

No matter the title or designation, all real estate professionals providing real estate value-related services to the lending industry can be subject to the same pressures to commit fraudulent or otherwise unethical behavior. Extending the same level of independence protection to appraisers and other providers of valuation and evaluation services is prudent.

<u>Legal remedies for not paying a customary and reasonable fee</u>

We advocate the setting of a materiality threshold.

To reduce the number of nuisance claims that might arise as a result of Dodd-Frank, we propose imposing a materiality threshold. Claims that an AMC has not paid what an appraiser considers to be customary and reasonable should be evaluated to determine if the claimant's opinion of customary and reasonable was significantly higher than what was ultimately paid.

The fines outlined in Section 129E(k) are excessive and unduly threatening to the business operations of AMCs.

Protecting valuation independence is important. As the Dodd-Frank Act carries many of the protections provided under the HVCC into TILA, most market participants are aware of the requirements. However, the newly created fines of $10,000 or $20,000 per day are overly burdensome, particularly given the amount of compliance confusion that the new customary and reasonable fee requirements are causing in the industry. A small AMC could be put out of business with just one customary and reasonable fee claim. If smaller AMCs cannot operate, more of the market will be captured by a small number of larger entities. The lending industry, and particularly consumers, could be harmed by this reduced competition.

We advocate that the fines for customary and reasonable fee violations be decoupled from the $10,000 to $20,000 per day fines for violations of the other independence provisions, and that a cure period be provided, during which an AMC that is found to be noncompliant with the customary and reasonable fee provision can be counseled on best practices.

An offered fee should not be the sole basis for a valid claim or a cause of action.

As noted above, the offer and acceptance process is critical to determining a customary and reasonable fee for an individual assignment. If an appraiser feels that the fee proposed does not constitute a customary and reasonable fee, the appraiser should either propose a different fee and explain that the scope of work is greater than the lender/AMC initially realized, or decline the order. If appraisers, or any parties are given standing to bring suit based merely on fees offered, exposure to lenders and AMCs will be too great, and a critical component of the customary and reasonable fee determination process will be negated.

It is critical that an appraiser produces a credible value opinion. However, each appraiser has a different level of experience and professional designation. A fee declined by one appraiser may be appropriate for a less experienced, but still qualified, appraiser. Further, business decisions beyond appraiser qualifications, such as the choice to offer volume discounts, are an important free market and consumer protection component that would be negated should lenders and AMCs feel compelled to always select a higher-priced appraiser merely to avoid exposure.

Requests for clarification

MDA requests clarification on two aspects of the violation language contained within Section 129E(k)(1) of the Dodd-Frank Act. First, what will the process be for determining that violations of the valuation independence requirements have occurred? Second, if a violation has occurred, how will the number of days for an individual violation be calculated for the purpose of imposing the $10,000 to $20,000 per day fine? We understand that the answers to these questions may be borne out at the statutory level and in future court decisions, but any further direction the Fed would be willing to offer would be most helpful.

Thank you for your careful consideration of our comments and requests for further clarification. Should you have any questions or concerns, please do not hesitate to contact us.

Sincerely,

John Hosey
Chief Appraiser