



**INDEPENDENT COMMUNITY
BANKERS of AMERICA**

December 22, 2010

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

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

Dear Ms. Johnson:

The Independent Community Bankers of America¹ welcomes the opportunity to comment on the interim final rule amending Regulation Z (Truth in Lending) to implement Section 129E of the Truth in Lending Act (TILA) which was enacted as Section 1472 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Act established new appraisal independence requirements for consumer credit transactions secured by the consumer's principal dwelling. The amendments are designed to ensure that real estate appraisals used to support creditors' underwriting decisions are based on the appraiser's independent professional judgment, free of any influence or pressure that may be exerted by parties that have an interest in the transaction. The amendments also seek to ensure that creditors and their agents pay customary and reasonable fees to appraisers.

The interim final rule applies to a person who extends credit or provides services in connection with a consumer credit transaction secured by a consumer's principal dwelling. Although TILA and Regulation Z generally apply only to persons to whom the obligation is initially made payable and that regularly engage in extending consumer credit, TILA Section 129E and the interim final rule apply to persons that provide services without regard to whether they also extend consumer credit by originating mortgage loans. Thus, the interim final rule applies to creditors, appraisal management companies, appraisers, mortgage brokers, realtors, title insurers and other firms that provide settlement services.

¹ *The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.*

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold more than \$1 trillion in assets, \$800 billion in deposits, and \$700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

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The Act also provides that when the Board promulgates the interim final rule, the Home Valuation Code of Conduct, the current standard for appraisal independence for loans purchased by Fannie Mae and Freddie Mac will have no further force or effect.

Safe Harbor for Small Institutions

The interim final rule provides a safe harbor for compliance with the prohibition on conflicts of interest for employees and affiliates of creditors with assets of \$250 million or less as of December 31 for either of the past two calendar years. In such an institution a creditor may use its own employee or affiliate to prepare a valuation or perform valuation management functions for a particular transaction as long as firewalls and certain safeguards are in place. For example, the compensation of the person preparing a valuation or performing valuation management functions is not based on the value arrived at in any valuation; the person reports to a person who is not part of the creditor's loan production function and whose compensation is not based on the closing of the transaction; no employee, officer or director in the creditor's loan production function is directly or indirectly involved in selecting, retaining, recommending or influencing the selection of the person to prepare a valuation or perform valuation management functions or to be included in or excluded from a list of approved persons who prepare valuations or perform valuation management functions.

ICBA supports this safe harbor provision and appreciates the Federal Reserve's recognition of the difficulties that small institutions with limited staff resources would face if they were required to comply with the conflict of interest prohibitions that apply to larger institutions.

Customary and Reasonable Compensation

The interim final rule provides that fee appraisers must be paid a customary and reasonable fee for appraisal services performed in the geographic market in which the property being appraised is located. The rule provides two alternative ways in which creditors and their agents may qualify for a presumption of compliance:

First presumption of compliance:

- The amount of compensation is reasonably related to recent rates for appraisal services performed in the geographic market of the property. The creditor or its agent must identify recent rates and make any adjustments necessary to account for specific factors, such as the type of property, the scope of work and the fee appraiser's qualifications; and
- The creditor and its agent do not engage in any anticompetitive actions in violation of state or federal law that affect the rate of compensation paid to fee appraisers, such as price-fixing or restricting others from entering the market.

Second presumption of compliance:

- A creditor and its agent are also presumed to comply if the creditor or its agent establishes a fee by relying on rates in the geographic market of the property being appraised established by objective third-party information, including fee schedules, studies and surveys prepared by independent third parties such as government agencies, academic institutions, and private research firms. The interim final rule follows the statute in requiring that fee schedules, studies and surveys or information

derived from them, used to qualify for this presumption of compliance must exclude compensation paid to fee appraisers for appraisals ordered by appraisal management companies.

While ICBA agrees that appraisers should be appropriately compensated, we have concerns that the requirements for presumption of compliance will disadvantage smaller lenders that are not able to hire private research firms to conduct studies or themselves conduct extensive research to determine what are customary and reasonable fees for the geographic areas where they are located. The appraisal fee schedule available through the Department of Veterans Affairs is somewhat helpful, but only provides maximum fees on a state level. It may be difficult to apply in rural areas where properties may require more work as comparable properties are difficult to find, properties differ greatly and an appraiser may need to travel significant distances to review comparables.

Rural banks will also face difficulties comparing fees where there are relatively few transactions in the appropriate geographic area that would be considered "recent." We are concerned that data gathering and documentation will be overly burdensome for smaller institutions in areas where there is a relatively low volume of transactions. Community bankers have told ICBA that generally the appraisers used in these areas set their fees, thus they are in the position to determine if they are being fairly compensated. Consequently, we ask that the safe harbor for small institutions be extended to the issue of customary and reasonable compensation.

ICBA appreciates the outreach by Federal Reserve staff to the industry and its work on this interim final rule given the very short statutory deadline. Aspects of this rule will change how segments of the industry operate. Thus, we urge the Federal Reserve to continue its dialogue with those impacted to ensure that any unintended consequences are rapidly addressed and appraisal costs do not increase unnecessarily beyond what is customary and reasonable and that the burdens of the rule on smaller lenders and service providers do not force them out of the mortgage market lessening credit availability and consumer choice.

We appreciate the opportunity to comment on the interim final rule. If you wish to discuss our comments further, please contact the undersigned at 202-659-8111 or email at ann.grochala@icba.org.

Sincerely,

/s/

Ann M. Grochala
Vice President