Chairman Ben S, Bernanke
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, North west
Washington, DC 2 0 5 5 1
Re: Interim Final Regulations Implementing Section 129E of the Truth in Lending Act
Dear Chairman Bernanke:

Regarding: Regulation Z, Truth In Lending;
Docket No. R–1394
RIN AD–7100–56

December 27, 2010

Chairman Bernanke,

I appreciates the opportunity to comment upon the Advance Notice of Proposed Rule making regarding the Regulation implementing Section 129E of the Truth in Lending Act (TILA).

My name is Richard Hagar. I am a real estate agent, real estate appraiser, an SRA with the Appraisal Institute and a state(s) certified instructor. I provide anti-fraud training to government investigators, prosecutors, law enforcement officers as well as real estate professionals.[1] I have been actively involved with the creation of numerous laws and regulations relating to the mortgage, appraisal and appraisal management industries. I also provide training to banks, lenders and credit unions regarding compliance, audits, appraisal issues and Inter-Agency Guidelines.

Numerous letters have been sent to you defining the problems. In my comments today I'll try to not restate their positions. It's obvious, by the volume of letters, that there are problems. It's also very obvious that the banks and appraisal management companies (AMC) are ignoring current laws and regulations during their daily operations. The failure of AMCs to follow existing regulations and bank's improper use of AMC services have triggered the need for additional regulation concerning "customary and reasonable" fees. Many of the letters ask for a delay, or rejection, in implementing new regulations; Several letters were submitted by the very entities that are causing the problem. Please do not delay in implementing regulations regarding "customary and reasonable" fees.

For years, banks and non-banking lenders have been prohibited from keeping a portion of the appraisal fee paid by the borrower. The fee charged to the borrowers was the fee paid to the appraisal. The system also necessitated a bank's use of an internal appraisal division for the management of appraisers. These internal departments were compliance departments and not "profit centers" for the banks. One of the applicable

[1] "Real estate professionals" includes: Real estate agents, appraisers, escrow agents, mortgage brokers, loan originators, banks, and credit unions.

laws is the Real Estate Settlement Procedures Act (RESPA)[2] which prohibits:

> *"..the payment or acceptance of any fee, kickback or "thing of value" pursuant to any agreement or understanding that business incident to or a part of a settlement service shall be referred to any person. Further, RESPA prohibits the payment or acceptance of any portion, split or percentage of any charge made or received for the rendering of a settlement service...."*

However, with the growth of AMCs, banks have figured out that owning a separate company for the purposes of "managing" appraisers allowed them to move the management function to an entity outside of the bank. This has also allowed banks to skim, from the borrower, a portion of the appraisal fee paid to the appraiser. This is clearly a violation of RESPA as evidenced in Sections 2601 and 2607. What has recently developed is a) a more costly "appraisal fee" charged to the borrower, b) the bank, by way of their wholly owned AMC subsidiary, taking a portion of the fee and, c) the provider of the service being paid less than was received years ago. Due to a lower amount being paid to the appraiser, appraisers compensate by reducing the work effort and quality of the appraisal delivered to the lender. The bank's desire to obtain a portion of the borrower paid "appraisal fee" has resulted in the insertion of a third-party AMC which provides no benefit to the borrower or the service provider, the appraiser.

Banks are using AMCs to circumvent or ignore the intent of RESPA and in direct contradiction to numerous Inter-Agency Guidelines relating to 'third-parties."[3] The problem has grown so large that State and Federal Governments seek the licensing and registration of AMCs and the full disclosure of their fees. Numerous class action lawsuits have been filed, against the largest banks over these same issues. These lawsuits usually include the term "appraisal fee skimming" scam.[4]

The problems are clear:

- Banks and lenders are using independent AMCs, and wholly owned subsidiaries, to circumvent laws and regulations.
- Various Federal Agencies are reluctant to audit or discipline bank owned AMCs while at the same time preventing State Agencies from auditing these companies. This has created a gray area in which most AMCs operate.
- Lenders, by way of the AMC, are still applying pressure against appraisers for predetermined values or the reporting of "favorable" conditions, when they don't exist.
- AMCs tend to utilize the cheapest, or "number hitting" appraiser instead of the best, a direct violation of Inter-Agency Guidelines.[5]
- With the growth of AMCs and their taking of a portion of the "appraisal fee," the number of highly qualified appraisers is in steep decline. The quality of appraisals has been reduced to a point where they **fail** to indicate the true condition or value of the property (security for promissory note). The

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[2] RESPA (1974): 12 USC; 2601

[3] OCC Bulletin 2001-47

[4] Copies available upon request

[5] OCC Guidelines 2003-9a; Independent Appraisal and Evaluation Guidelines

collapse of many lenders can be directly related to this failure.

- The fees paid to the appraiser, by the AMCs **are not customary nor reasonable**.
- Borrowers are not aware that a portion of their "appraisal fees" are being paid to a third-party, often a subsidiary of the lender, with no direct tangible benefit to the borrower.

AMCs offer a reasonable business solution to many small lenders that can not afford independent appraisal departments. Therefore, the existence of AMCs will continue however, transparency into their involvement, ownership and services is necessary to protect the public. Appraisers must receive a reasonable fee for their products and services. The quality of appraisers, and their reports, are of direct benefit to lenders and consumers.

With this in mind I offer the following suggestions and alternatives that should be incorporated into Federal Guidelines.

Definitions -

A customary and reasonable fee: A) The fee the appraiser would charge if dealing directly with a lender, without interaction, diversion or impact from or by an AMC or other type of management or sales company.

B) The fee for services that appraisers would charge if they were dealing directly with the lender without the use of an AMC, management, sales or other third-party.

- *In other words, the fee appraisers charged the bank before the AMC came along*
- *No need for any "study" or appraisal fee schedule.*

Appraisal fee: The fee received directly by the appraiser or appraisal company. This fee cannot include any charge or fee paid to, or received by, any AMC, or any third-party, as a transaction, processing, commission, management or other fee of similar intent. The appraisal fee must be identified on Line 804 of the HUD-1. This is the fee the borrower believes they are paying for the appraisal(s) and the fee paid to the appraiser or appraisal company.

Other suggested or alternative text:

- Any and all fees charged by the AMC cannot be part of the "appraisal fee" as disclosed on Line 804 of the HUD-1.

- The fee paid to the AMC, for their services, must be clearly delineated as an "appraiser management fee" and must be shown on a line separate from the appraisal fee. AMC fees may be shown on lines 808 through 811 or other lines as considered appropriate in disclosing their impact on transaction and/or borrowers funds.

- Any fees paid by appraisers to a lender or AMC, for processing, "signing-up" using AMC services, being on the AMC list, or "being an approved appraiser," must be disclosed separately on the HUD-1.

- No appraiser shall give and no AMC shall accept any portion of any appraisal fee for the receipt of, or the right to receive an appraisal order. This prohibition applies to any fee paid prior to, during or after the close of a loan transaction or the extension of credit. (*RESPA*)

- Each and every AMC, will be charged a fee of no less than $XX.00 per year for every appraiser on their "approved list" or panel. The appraiser is prohibited from paying or reimbursing this fee to the AMC. This fee may only be paid by the AMC or lender.

Additional or alternative text:

- The AMC is not allowed to receive a discount from the appraiser.
- The AMC is not allowed to take any portion of the "Appraisal Fee" charged to the borrower.
- The AMC must disclose their products and services to the borrower.
- If the AMC fee is for the borrowers benefit then the borrower is allowed to select the products and services and decide which AMC is the provider of the service.
- Any and all fees charged by an AMC must be paid by the entity that engaged or designated the use of the AMC.
- Lenders, banks, credit unions or Realtor associations are prohibited from owning a controlling interest in, or influencing the operations of, an AMC.
- If a lender, bank, credit union, or Realtor association use the products and services of an AMC, then the Association is prohibited from owing any interest or stock in that AMC. (reducing the possibility of steering and influence)

Many of these suggestions are being incorporated into numerous State Laws. Additional coordinated guidance by the Agencies will be of benefit to all. The quality of appraisals and the fee paid to appraisers are of direct interest to consumers of the United States. Please do not delay in implementing rules regarding appraisals, AMC and "customary and reasonable fees."

Sincerely,

Richard Hagar

Richard Hagar SRA
The Hagar Institute
American Home Appraisals