From: Jack Konyk
Sent: Thursday, September 23, 2010 2:48 PM
To: Kitty Ryan
Cc: don.kelly@REVAA.org; dhorne@russreid.com; James Brodsky; James Milano
Subject: Additional comments regarding the appraisal independence rulemaking

Kitty,

On behalf of the Real Estate Valuation Advocacy Association (REVAA), thanks for all of your outreach efforts on this matter, and particularly for including REVAA in those efforts. We were happy to participate in the group call, and offer what observations and input we could to help you as you develop the interim rule mandated by the Dodd-Frank Act.

After reflecting on the breadth of information provided and the complexity of the task facing you, we decided to provide you with a follow-on set of responses to your questions in writing, both for whatever help they can provide in this immediate effort as well as to be a part of the record as you move forward with additional rulemaking on topics outside those finally determined to be required in the interim rule.

Please don't hesitate to call on me, and the leadership and members of REVAA, if there's anything we can do to assist in the future. And thanks again to you and all your staff for the thorough and thoughtful efforts toward implementing an interim rule that continues to maintain essential appraisal independence without unnecessary disrpution of the mortgage marketplace.

All the best,

Jack

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REVAA
Real Estate Valuation Advocacy Association

September 22, 2010

Ms. Kathleen C. Ryan
Senior Counsel
Division of Consumer and Community Affairs
Federal Reserve Board

RE: Appraisal Independence Rulemaking

Dear Ms. Ryan,

REVAA (The Real Estate Valuation Advocacy Association) thanks you for including us in your outreach efforts to gather information as you address the rulemaking requirements on the aforementioned topic arising out of Section 1472 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

REVAA is a trade association with member companies dedicated to the maintenance and further development of high quality standards within the real estate valuation industry and the advocacy of related causes. REVAA promotes high ethical standards, political awareness, and the growth of the real estate valuation industry as a whole. REVAA is comprised of companies that produce and sell, or benefit from, real estate valuation products including Appraisals, Broker Price Opinions (BPOs), Automated Valuation Models (AVMs) and other innovative valuation approaches that benefit mortgage investors, servicers, originators and borrowers.

We salute your thoughtful and thorough efforts to gather information impacting on your rulemaking efforts and, following on from our conversations during your outreach call, are pleased to provide the following responses to your questions that served as the foundations of that discussion.

For your convenience, we have reproduced your questions, and inserted our responses following each.

Background

1. How has the process of ordering, obtaining, and paying for an appraisal changed since the Home Valuation Code of Conduct (HVCC) and the Board's appraiser coercion rules under Home Ownership and Equity Protection Act (HOEPA) (12 C.F.R. § 226.36(b), available at http://edocket.access.gpo.gov/2008/pdf/E8-16500.pdf) became effective?

> *Appraisal management companies (AMC) have been active for many years assisting lenders and clients with valuation services and systems management necessary to comply with legal and regulatory requirements. Many times an AMC complements or supports a lender's in-house appraisal function and provides necessary firewalls to prevent collusion or other improper actions. The HVCC had an impact on the ordering and obtaining of appraisals primarily in regard to an increase in volume; that is, more lenders tended to "outsource" the appraisal function to AMCs in an effort to readily comply with "independent appraisal" requirements. Typically, an AMC provides an appraiser with a stream of assignments from numerous clients and lenders, as opposed to the local appraiser having to market their services to multiple national lenders.*

When a lender obtains an appraisal from an AMC, there is an additional layer of quality review and regulatory compliance built in. AMCs also pay appraisers directly, whether or not they have been paid by the lender (taking on the task of bill collection). Such a service and process is not new since HVCC or HOEPA, but there has been an upward trend in volume.

2. Do lenders have different collateral valuation processes for different types of home-secured loan transactions, such as HELOCs v. closed-end mortgages, or first-lien mortgages v. second-lien mortgages? If yes, please explain. How, if at all, should these different processes be taken into account in drafting the rules required by the Act?

Valuations are used primarily as part of the risk management process. Clearly, different loan types and circumstances dictate a different process, and the use of a broad spectrum of valuation products. Lenders, particularly in the loan servicing departments, rely on a variety of valuation products to identify and control risk as well as monitor loans for regulatory compliance. In our view, rules should reflect and account for the circumstances inherent in the diverse lending environment and marketplace. Alternative valuation products such as Broker Price Opinions (BPOs) and Automated Valuation Models (AVM's), delivered through AMCs or in-house, can help lenders manage the risks attendant to mortgage lending and servicing. Such services should not, in our opinion, be subject to rules under the Act unless those rules are specifically adjusted to account for the attendant reliability and unique character of those alternative services. Notably, AVM's and BPOs are increasingly data-driven, with due diligence and firewalls that substantially negate the opportunity for collusion or fraudulent activity. In fact, many lenders rely on BPOs as part of their due diligence and fraud prevention practices.

3. What are key "lessons learned" from implementation of the HVCC and the HOEPA appraiser coercion rules in 12 C.F.R. § 226.36(b) that you think the Board should keep in mind in drafting the Interim Final Rule? In addition to problems you have encountered, if any, what do you think are the positive aspects of the HVCC and the HOEPA rules?

Recognition of the issue of appraisal independence has been a positive. The need for firewalls is well demonstrated, and the fact that AMCs can provide that assurance is a valuable lesson. Recognizing the positive aspects that technology brings to mortgage lending and servicing is very important as rules are written.

<u>Covered parties</u>

4. New § 129E(b) states that an act or practice that violates appraiser independence includes "any appraisal . . . in which *a person with an interest in the underlying transaction* compensates, coerces, extorts, colludes, instructs, induces, bribes, or intimidates" anyone involved in conducting the appraisal.

Is the statutory language sufficiently clear regarding who is covered, or does the Board need to provide additional guidance?

Further consideration regarding the definition of a "person with an interest" is necessary. Often times, a vendor management company will provide additional services to lenders unrelated to an appraisal assignment. The Board should clarify that the provision of such additional services are not intended to be included in this definition.

<u>Covered transactions</u>

5. New § 129E applies to acts or practices related to appraisals for "consumer credit transactions secured by the principal dwelling of the consumer." This is a broad class of transactions. Are there any types of home-secured consumer credit transactions for which appraiser independence is not a concern?

Not every transaction should require an appraisal, and that decision should be based on the relative risk associated with the transaction. Credit worthiness of the prospective borrower should be a fundamental consideration, as well as their capacity to repay. Alternative valuation services are often used to establish or validate the value of collateral. If the risk inherent in a transaction suggests that an appraisal is justified, then the issue of independence becomes relevant and the independence rules should apply. Simply put, appraiser independence rules should apply to appraisers performing appraisals for loan origination purposes.

<u>Definitions – appraiser, appraisal, appraisal management company</u>

6. The Act does not define "appraiser" or "appraisal" for purposes of new TILA § 129E. In Board regulations implementing consumer protection statutes such as HOEPA and the Equal Credit Opportunity Act (ECOA), the meaning of these terms is broader than state-licensed or -certified appraisers and formal appraisals (defined, for example, in 12 C.F.R. §§ 226.36(b)(3) and 225.61(a), respectively).

Regulation Z (implementing TILA). The Board adopted a definition of "appraiser" in its 2008 HOEPA rulemaking, as follows: "a person who engages in the business of providing assessments of the value of dwellings. The term 'appraiser' includes persons that employ, refer, or manage appraisers and affiliates of such persons." 12 C.F.R. § 226.36(b)(3).

Regulation B (implementing ECOA). Regulation B defines an "appraisal report" – a copy of which the consumer is entitled upon request – as "the document(s) relied upon by a creditor in evaluating the value of the dwelling." 12 C.F.R. § 202.14(c). Commentary to Regulation B states that "appraisal reports" include reports of value prepared by appraisers who are certified or licensed as well as those who are not. See comments 14(c)-1 and -2. ECOA's requirement to provide the consumer with a copy of the "appraisal report" upon request has generally been interpreted to include "evaluations" (*see* 12 C.F.R. § 225.63(b)) and the valuation methods used to support them, such as broker price opinions (BPOs) and automated valuation models (AVMs).

These definitions of "appraiser" and "appraisal report" reflect the Board's recognition that TILA and ECOA are consumer protection statutes intended to provide the broadest consumer protection possible, consistent with institutional safety and soundness.

Congress determined that the new appraiser independence requirements belong in TILA, which, as noted, is a consumer protection statute. Is there any reason that TILA § 129E should nonetheless diverge from existing Regulations Z and B and cover only, for example, formal appraisals and state-licensed or -certified appraisers?

> *HVCC, and the consumer protection aspects of the Act, focus on the need to ensure the independence of the appraiser as she/he performs an appraisal for a mortgage loan transaction. We believe it is entirely consistent with this emphasis to limit appraiser independence provisions to bona fide appraisers performing appraisals for such transactions. Appraisals and appraisers have been the subject of review and scrutiny as to their role in contributing to the current lending and economic crisis, and thus should be covered specifically in the rule. Appraisers, utilizing their judgment, may unwittingly transfer bias or miscalculations in the development of their report. This, coupled with subtle yet inappropriate influence where firewalls may not exist, increases the potential for faulty valuations.*
>
> *In contrast, the role that AVMs and BPOs play in the loan origination process does not require application of the same independence standards. First, AVM's are computer-based models, with various systematic checks to preserve their integrity, and thus there is a greatly reduced risk of any inappropriate influence. Further, appropriate controls for AVM's are already contained in other provisions of Dodd-Frank. For example, section 1473 of Dodd-Frank supplements the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) with new provisions requiring that AVM's adhere to quality control standards that protect against the manipulation of data and prevent conflicts of interest.*
>
> *Likewise, Section 1473 of Dodd-Frank already addresses the potential misuse of BPOs in the loan origination process by clarifying that BPOs may not be used as the **primary basis** to determine value in connection with a loan origination decision [emphasis added]. This is appropriate, as the principal use of BPOs in the origination process is actually as an additional data source ordered by the lender to identify and prevent potential appraisal fraud. BPOs, therefore, typically serve as a **control** against inappropriate valuation pressure in loan originations, rather than as a potential **source** of valuation pressure.*

7. The Act does not define "appraisal management company." Is guidance needed regarding the meaning of this term?

> *Yes, and to promote consistency and facilitate compliance, this should be the same definition as included in the registration standard.*

Prohibited practices

8. New TILA § 129E(b)(1) states that an act or practice that violates appraiser independence includes "any appraisal . . .in which a person with an interest in the underlying transaction *compensates, coerces, extorts, colludes, instructs, induces, bribes, or intimidates*" anyone involved in conducting the appraisal. Substantially similar language exists in the HVCC, along with 10 examples of prohibited conduct. The Board's appraiser coercion rule also includes several examples of prohibited conduct.

Should the Board consider providing definitions of these terms (note that if the Board's regulation does not define a term, then the term is deemed to have the meaning given it under applicable state law or contract), or is providing examples of prohibited conduct sufficient for the rules?

> *One area of HVCC generating significant confusion was the actual construction of the prohibited conduct provision. For example, in I.B.(1) of HVCC is it per se pressure to "withhold timely payment" for an appraisal report? This, we believe, is too restrictive. A reasonable interpretation would be that withholding payment is only improper where it is done with the intent to "influence the development, reporting, result, or review of an appraisal." This is compounded by the fact that some of the listed activities arguably should be invalid no matter what the motivation (e.g., conditioning the ordering of the report on the value conclusion to be reached). The confusion often carries over to state-level AMC registration statutes that seek to include similar language from HVCC. The rule should address these structural problems.*

Of the examples of prohibited conduct listed in the HVCC and the Board's rule, which should the Board consider including or excluding in drafting rules under § 129(E)(b)(1)? Should the Board consider any additional examples of prohibited conduct under § 129E(b)(1)?

> *In consideration of the complexity of the rulemaking effort and the fact that many of the comments the Board has received may lead to somewhat different base standards and definitions, we would only suggest that the Board consider the provision of examples after the actual requirements are decided in detail. Only then can appropriate examples be created that reliably illustrate those requirements.*

9. New § 129E(b)(2) – (4) describes three other practices that violate appraiser independence. Should the Board be aware of any questions or concerns raised by inclusion of these additional practices?

> *Prohibited practices should be required to correspond with the intent to influence. For example, timely payment may properly be withheld where the terms of a contract for services has been breached, or for other good reason. The Board should require that an* **"intent to influence"** *be shown in order for a violation to occur.*

10. New § 129E(c) lists three practices that are expressly permitted. Should the Board be aware of any questions or concerns raised by this subsection? Should the Board consider any additional examples of conduct that is *not* prohibited?

> *In consideration of the complexity of the rulemaking effort and the fact that many of the comments the Board has received may lead to somewhat different base standards and definitions, we would only suggest that the Board consider the provision of examples after the actual requirements are decided in detail. Only then can appropriate examples be created that reliably illustrate those requirements.*

Prohibition on conflicts of interest

11. New § 129E(d) prohibits any appraiser or appraisal management company involved in conducting, procuring or facilitating an appraisal from having a direct or indirect interest in the transaction involving the appraisal.

Does this prohibition raise compliance concerns for institutions of a particular size or type (*e.g.*, depository v. nondepository)? The HVCC, for example, permits in-house appraisers to conduct appraisals if the lender has certain firewalls and safeguards in place to protect the appraiser's independence from loan production staff. The HVCC further exempts "small banks" (having assets of $250M or less) from the conflict of interest provisions (HVCC § IV) entirely.

> *We believe that Congress intended to prohibit an appraiser or AMC from providing appraisals in transactions where they had an interest arising from the incident transaction itself, not merely because a related entity was also providing another settlement service in the completion of the transaction. Particularly in the case of smaller institutions, the ability to deal with a single provider of necessary settlement services is critical given the lower levels of in-house staff available. This is the same impetus that drives smaller institutions to seek the independence firewalls provided by AMCs, where smaller staff levels makes the necessary divisions of labor necessary to achieve them in-house difficult if not impossible.*

Mandatory reporting

12. New § 129E(e) requires any person involved in a home-secured consumer credit transaction who has a "reasonable basis to believe" that an appraiser is violating the Uniform Standards of Professional Appraisal Practice (USPAP) or state or federal law, or is otherwise acting unethically or unprofessionally, to refer the matter to the applicable state appraiser certifying and licensing agency.

Should the Board be aware of any questions or concerns raised by this subsection? Is the statutory language sufficiently clear, or is additional clarification needed?

> *The Board should note that "unethical" and "unprofessional" are not defined, and may well be in the eye of the beholder. The rule should provide greater clarity and limit this section to avoid frivolous actions and potential abuses. Further, the Board should also provide that anyone*

making a referral required under this section in good faith receives a safe-harbor protection against legal actions alleging slander or libel. A similar provision is contained in the rules for filing Suspicious Activity Reports under the Bank Secrecy Act, and is an essential protection if the Board actually intends to achieve compliance with this provision.

<u>No extension of credit</u>

13. New § 129E(f) codifies a requirement adopted by the Board in its 2008 HOEPA rulemaking (12 C.F.R. § 226.36(b)(2)): a creditor who "knows, at or before loan consummation," of violations of appraiser independence rules committed in relation to the appraisal, may not extend credit based on the appraisal unless it has acted with "reasonable diligence" to ensure that the appraisal is accurate. Board commentary provides that "reasonable diligence" may be achieved by obtaining another appraisal.

What has been creditors' experience with this rule so far? Is additional guidance needed? For example, would using the results of an AVM be sufficient to ensure that the appraisal is materially accurate and that consumers are protected from potential value distortions created by violations of appraiser independence rules?

We believe an AVM or a BPO reflecting a substantially similar value should be considered sufficient to ensure that an appraisal is materially accurate. The reliability and integrity of these products have been validated by their extensive use by lenders dealing with troubled properties and delinquent loans. Today's market demands the use of technology-based and efficient products designed to assist lenders, investors and consumers in determining the value of real estate assets and collateral.

Is the cost of obtaining a second appraisal to qualify for the "reasonable diligence" safe harbor typically passed on to the consumer or absorbed by the lender?

REVAA has no direct information with which to respond to this question, and would expect that practices vary from lender to lender. However, we do believe it is important to note, relative to this question and other elements of the rulemaking where costs to consumers come into consideration, that there is in reality no such thing as a cost that is not passed on to a consumer. Lenders are not able to print money, and therefore **<u>every cost</u>** *incurred by a lender is passed on to consumers in some way. Costs not* **<u>directly</u>** *passed on to the specific consumer in a specific transaction simply become a part of the lender's operating overhead and get reflected in their overall pricing, which is then borne by all consumers who transact business with the lender. Therefore, it is essential that rulemaking recognize that there is no ability to impose costly requirements on lenders or other parties in the lending process without ultimately increasing the cost of credit to borrowers.*

Customary and reasonable fee

14. New § 129E(i) requires that "lenders and their agents" compensate "fee appraisers at a *rate that is customary and reasonable* for appraisal services performed in the market area of the property being appraised." Evidence for "customary and reasonable" rates may be based on "objective, third-party information, such as government agency fee schedules, academic studies, and independent private sector surveys. Fee studies shall exclude assignments ordered by known appraisal management companies."

What guidance or clarifications should the Board consider that would facilitate compliance with the requirement that lenders and their agents compensate fee appraisers at a rate that is customary and reasonable?

> *We believe it is critical for the Board to recognize the wide array of variances that exist between appraisal assignments of different levels of complexity, purpose, type, and location (among other factors), and between local markets. Therefore, it would suggest that some identification of the various elements of difference must be provided in order to permit determination of the correct "customary and reasonable" fee appropriate to any given appraisal request in consideration of its unique combination of those elements.*
>
> *Possibly even more essential is that the Board recognize the various sub-tasks that are involved in the process of obtaining an appraisal, permit lenders to differentiate between who is actually performing each of the various sub-tasks in any given circumstance, and then pay that portion of the overall appraisal fee to the appropriate party. Nothing short of this would be fair or equitable, or would comply with RESPA's requirement to pay settlement service providers only for those services they actually provide. Using any sort of survey of prices charged on appraisal assignments directly between lenders and field appraisers, and forcing those studies to not consider assignments involving known AMCs (who presently account for approximately 70% of the appraisals done in this country) will ensure that any resulting conclusions will identify only the fee appropriate for circumstances where the field appraiser themselves must perform all the associated sub-tasks involved in the process. Requiring, then, that that same fee be paid to the field appraiser even when some other party (such as an AMC) is actually performing some number of those sub-tasks would force lenders into a circumstance where their ability to be fair, equitable or even RESPA-compliant would be extremely difficult. Any rules must therefore find a way to permit the proper allocation of overall appraisal fees to the parties actually performing each of the pertinent sub-tasks.*
>
> *The better and more obvious manner of determining what the "customary and reasonable" fee for any given product or service should be, would be to let the price be determined by open competition in a free market. The fact that there are hundreds of AMCs engaging thousands of field appraisers across the country would suggest that the prices field appraisers routinely accept for those assignments are indeed customary and reasonable for the specific sub-tasks they are performing. If they were not, the appraisers would refuse those assignments and the AMCs would be unable to complete those assignments. However, that is not happening. As we said, AMCs presently account for approximately 70% of the appraisals done in the United States. And*

since hundreds of AMCs compete with each other, there is not a monopoly, and the price being paid certainly reflects a reasonable price.

In fact, it must also be recognized that the practice of distributing appropriate parts of an appraisal fee to the actual people performing the relevant sub-tasks is neither new, nor unique to AMCs. With the exception of one-person appraisal operations, appraisal companies who employ or otherwise contract with individual appraisers have always conducted their operations in such a manner. The firm typically oversees the overall process including marketing, administrative overhead, review of the appraisal or quality control, insurance, and all the business related details associated with running and managing an ongoing concern or company. The "payment" of "fee" to the company is a lump sum, yet the compensation to the appraiser is an agreed upon amount and merely a portion of the total fee collected. Typically for the traditional appraisal firm, the "split" is either 50-50 or even 60-40, with 60% going to the company to cover all its costs. AMCs organize themselves in a similar manner. That is, the AMC performs all the business related activities, including quality control, review, insurance, marketing, etc., while the assigned appraiser only performs those tasks associated with the development of the appraisal -- the data analysis and physical inspection of the property. And the overall fee is apportioned accordingly, as it should be. At a minimum, then, this practice must be appropriately considered in any determination of "customary and reasonable" fees, both by requiring that fee studies identify the actual amount of any fee actually being received by the field appraiser, regardless of whether an AMC is involved or some other entity standing in a similar role, and by requiring that any other entity standing in the same role as an AMC relative to the actual field appraiser must pass on said "customary and reasonable" fee in total to the field appraiser.

This brief overview of the issues involved in properly determining a "customary and reasonable" fee serves to demonstrate just how incredibly complex this issue is, and how difficult it will be to develop rulemaking that adequately addresses all elements of that complexity. It is for this reason, among a number of others, that we strongly urge the Board to exercise the flexibility provided by the statutory language and NOT include "customary and reasonable" fee rules in their 90-day rulemaking relative to practices that violate appraisal independence. Additionally, the Board should recognize that a considerable time will be required for lenders and others to integrate any new requirements into their systems. Some industry estimates are that up to eighteen months will be necessary.

Are you aware of studies and information sources that would meet the requirements for appropriate evidence of "customary and reasonable" rates? In particular, are you aware of sources that take into account geographical variations? Are there any suitable sources that are updated regularly?

We are unaware of any studies or information sources that have the requisite granularity and impartiality to serve the statutory purpose. We would further point out that the size, scope and complexity of any study that would attain those levels of granularity would be vast, and therefore would not be able to be created or executed quickly. Again, for this reason among a number of others, we strongly urge the Board to exercise the flexibility provided by the statutory *language and not include "customary and reasonable" fee rules in their 90-day rulemaking relative to practices that violate appraisal independence.*

Do you have experience with the FHA guidance on this point? With the VA fee schedule for appraisers? What "lessons" can we take from the government programs as we develop a draft rule?

First, both the FHA and VA programs represent a small (in FHA's case, much larger lately than typical although still less than half the total market), unique and targeted segment of the overall mortgage market, and therefore may not be sufficiently broad and varied to serve as a template for rules affecting the entirely of the market. These programs have specific and proprietary appraisal requirements that are not necessarily consistent with non-governmental appraisal standards, and these differences imply that the pricing would, and should, be different. However, philosophically, the FHA approach of basically recognizing that the price determined by open competition in a free market is the "customary and reasonable" price certainly seems much more appropriate, and obviously far less burdensome to the government agencies, than an agency-prescribed fee schedule. We would therefore urge the Board to mirror the FHA approach to recognizing the validity of free market competition. We would strongly encourage the Board to review HUD's Frequently Asked Questions regarding appraisal fees, which is available on the FHA's website at: http://www.hud.gov/offices/hsg/sfh/appr/faqs_fees-time.pdf, a copy of which is attached hereto for your convenience.

Another factor to consider is the "supply and demand" of appraisers in the current marketplace. We believe the marketplace is best equipped to determine the relative cost or value of services and products. With the advent of appraiser licensing, there now exists an identifiable number or pool of available and qualified appraisers. Regardless of current economic conditions, we know that the volume or demand for appraisal services differs from time to time and thus the price for those services vary depending on the balance of supply and demand. AMCs and appraisal companies are in the business of managing through these cycles and make the business decisions necessary to deliver consistent and necessary products and services to their clients. The Board should recognize the market factors involved.

To what extent do lenders use AMCs and "fee appraisers," as defined in new § 129E(i)(2), to perform appraisals? What trends do you see for the future?

Appraisal Management Companies presently account for approximately 70% of all appraisals conducted today. The division of work necessary to achieve the important independence firewalls, particularly in smaller lending organizations has been one factor driving that penetration, and expansion of those requirements across all originations (and not just government and agency originations) is likely to drive that number higher. The benefits of greater quality control and oversight brought to the process by the AMCs add even greater value to the participation of AMCs in the process as well, which is also likely to drive those numbers higher. Of course, if the rules around "customary and reasonable" fees create unreasonable and unsustainable pricing levels, lenders will face a very difficult choice between sacrificing these benefits and ensuring effective compliance with the independence requirements, versus seeing *their borrowers paying significantly higher appraisal-related costs. Again, for this reason among a number of others, we strongly urge the Board to exercise the flexibility provided by the statutory language and not include "customary and reasonable" fee rules in their 90-day rulemaking relative to practices that violate appraisal independence.*

How do lenders and AMCs engage fee appraisers? What are their criteria for including a fee appraiser on a list of approved appraisers or similar list (*e.g.*, price, qualifications, turnaround time, quality)? What are their criteria for selecting and compensating a fee appraiser for a particular transaction?

The precise methodology of engagement will differ among the various lenders and AMCs, but the process is generally comprised of a number of typical elements including the items you mention above. First, appraisers are evaluated for inclusion on a list of qualified appraisers in consideration of a number of factors including the appraiser's license levels, certifications, experience, location, willingness to accept minimum service-level standards, etc. Review of samples of the appraiser's prior work process is commonly done to assess quality. A formal engagement agreement is often utilized to document the duties and responsibilities of both parties. Once on the approved list, individual assignments are issued in consideration of a number of factors, often including suitability of the appraiser's qualifications to the individual assignment, geographic competence and proximity, quality ratings of recent assignments, availability to complete the assignment within required turn-around time, etc. While price may also be a consideration in the aforementioned processes, and will be negotiated with the appraiser as a part of the process, it is certainly not the sole or even primary determinant of either inclusion on the approved list or the placing of individual assignments.

Have appraisal prices that consumers must pay changed since the HVCC went into effect? In general, do consumers have to pay higher or lower prices for AMC-ordered appraisals than other appraisals?

We are not aware of any definitive, independent studies that would provide reliable answers to these questions. Anecdotally, examples of every possible circumstance have been claimed. The simple truth is that a sufficiently robust data source does not exist to permit the kind of granular analysis necessary to identify the impact HVCC and its related independence requirements, and the evolution of the appraisal processes including the advent of AMCs as a part of that process, have had on overall consumer price levels. And, while the ability to determine those answers is essential to identifying the "customary and reasonable" fees that should inure to the various people performing the various sub-tasks involved in the appraisal process, it will require a considerable amount of time to identify and gather all the necessary data and create the extremely challenging analytics necessary to properly evaluate all the elements that together comprise "customary and reasonable" pricing. Again, for this reason among a number of others, we strongly urge the Board to exercise the flexibility provided by the statutory language and not include "customary and reasonable" fee rules in their 90-day rulemaking relative to practices that violate appraisal independence.

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If available, please provide data on the cost differences for appraisals based on factors such as the scope of work, type of transaction, and source of the appraisal.

As discussed above, this kind of data is not presently available in a consolidated source. The members of REVAA would be happy to work toward assembling this kind of data from their own experience, assuming the legal constraints around anti-trust concerns can be acceptably satisfied. Even this level of data gathering and analysis, though, will take considerable time. Again, for this reason among a number of others, we strongly urge the Board to exercise the flexibility provided by the statutory language and not include "customary and reasonable" fee rules in their 90-day rulemaking relative to practices that violate appraisal independence.

If available, for appraisals ordered through an AMC or conducted through a lender's in-house collateral value function, please provide data breaking down costs to conduct the actual appraisal and associated management costs for the past three years.

Again, as discussed above, this kind of data is not presently available in a consolidated source. The members of REVAA would be happy to work toward assembling this kind of data from their own experience, assuming the legal constraints around antitrust concerns can be acceptably satisfied. Even this level of data gathering and analysis, though, will take considerable time. Again, for this reason among a number of others, we strongly urge the Board to exercise the flexibility provided by the statutory language and not include "customary and reasonable" fee rules in their 90-day rulemaking relative to practices that violate appraisal independence.

Thank you again for your thorough and thoughtful outreach efforts, and for including REVAA as a source of input. We stand ready to assist your ongoing efforts in any way we can. Please don't hesitate to contact me with any further questions you may have, or if you wish to discuss any of our responses further.

Sincerely,

Don Kelly

Donald E. Kelly
Executive Director

AMCs/Reasonable and Customary Fees/Turnaround Time FAQs

What is a reasonable and customary fee?

FHA believes that the marketplace best determines what is reasonable and customary in terms of fees. The fee is result of a business decision, which may or may not be negotiated, between the appraiser and the client. FHA does not set fees or determine whether a fee is reasonable and customary. Lenders are expected to know what is reasonable and customary in the areas in which they lend and are expected to ensure that the fees paid by consumers for both the appraisal and the management of the appraisal process are reasonable and customary.

What if the AMC assigns the appraisal based on the lowest bidder for the service?

The lender must determine whether an appraiser's qualifications, as evidenced by education, training and actual field experience, are sufficient to enable the appraiser to competently perform appraisals before assigning an appraisal to them. Even if the lender employs an AMC to manage the appraisal process, FHA holds the lender responsible, equally with the appraiser, for the quality and accuracy of the appraisal. If an appraiser chooses to be a low bidder on an assignment, he or she is not relieved of the obligation to produce a credible and accurate report.

Is "reasonable and customary" for any given market an objective number?

Given that a reasonable and customary fee depends on the complexity of the assignment and the expertise needed to perform and report a credible and accurate appraisal of the property, the fee will vary depending upon the property type, the purpose of the assignment and the scope of work and, therefore, cannot be easily defined as an objective number.

What will FHA do if there is a great disparity between the fee the appraiser reports and the fee on the HUD-1?

Appraisers have the option of reporting the fee on the appraisal but are not required to do so. The disclosure of the fee promotes transparency and FHA believes that borrowers and other parties should be aware of the fee paid for the appraisal. Consistent with RESPA guidelines, lenders are not required to break out or itemize appraisal related fees on the HUD-1.

Where do I complain when a lender wants to pay less than what is reasonable and

The lender is responsible for ensuring that all FHA policies are followed and therefore has the responsibility to ensure that appraisers are paid a reasonable and customary fee. An appraiser who feels that the fee offered or paid for the appraisal is not reasonable and customary should file notice with the lender. Appraisers should not accept an assignment if they believe that the terms of

customary?	the appraisal service being requested, including fees, are not reasonable.
Where do I complain if the AMC asks for an unethical or inappropriate fee or service?	FHA has no authority to regulate AMC's. If an AMC requests an appraiser to violate USPAP or act in an unethical manner, the appraiser should refuse the assignment and notify the lender. The appraiser should also contact the appropriate state authority where the property is located to determine if the state has regulatory authority over AMCS.
What do I do if the lender or AMC requires a quick turnaround time on appraisal assignments?	FHA does not set acceptable turnaround times for completion of appraisal assignments. Appraisers should always be familiar with the terms of an assignment and not accept assignments which have unrealistic terms. What is an acceptable turnaround time for one appraiser may be unacceptable to another appraiser.