Coalition to
Facilitate Appraisal Integrity Reform

December 23, 2010

VIA ELECTRONIC SUBMISSION

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

Re: Truth in Lending Act: Interim Final Rule
Docket No. R-1394; RIN No. AD-7100-56

Dear Ms. Johnson:

The Coalition to Facilitate Appraisal Integrity Reform ("FAIR" or "Coalition") thanks you for the opportunity to provide comments to the above-referenced interim final rule under Section 129E of the Truth in Lending Act ("TILA").

FAIR is a coalition of five of the nation's largest appraisal management companies ("AMCs"),[1] which operate networks of individual appraisers and appraisal firms for the completion of appraisal reports. In addition to pre-qualifying these appraisers and receiving appraisal orders from lenders and other clients, AMCs facilitate and manage the entire appraisal delivery process, including tracking the progress of the order, managing all communication between the lender and the appraiser, reviewing specific elements of appraisal reports for quality and compliance with applicable laws, ensuring prompt delivery of completed appraisals, and collecting and paying the appraisers' fees for their services. By acting as the sole point of contact between the lender and appraiser, AMCs also insulate the individual appraiser from any influence or coercion by the lender. AMCs, therefore, serve an important role in the appraisal industry and have a direct interest in the appraisal reform provisions contained in the interim final rule.

[1] These five appraisal management companies include: (1) LSI, a division of Lender Processing Services, Inc.; (2) ServiceLink Valuation Solutions, LLC, a Fidelity National Financial, Inc. company; (3) Valuation Information Technology, LLC d/b/a Rels Valuation; (4) CoreLogic, Inc.; and (5) PCV/Murcor. Rels Valuation is an affiliate of CoreLogic, Inc. and Wells Fargo Bank.

We recognize that Title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Act") did not require the Federal Reserve Board ("Board") to seek public comments on the interim final rule, and we are grateful for the opportunity to submit this letter.

I. EXECUTIVE SUMMARY

FAIR supports the Board's efforts to establish appraisal independence standards that uphold the quality and integrity of appraisals, as well as compensation standards that reflect the variations in actual services and other factors that exist in the marketplace. The reality of the appraisal market is that appraisal services are not one-size-fits-all, and we believe the Board has created a compliance structure for the payment of "customary and reasonable" appraisal rates that reflects the market and ensures that prices paid by consumers will remain competitive. The Coalition, therefore, believes that the dual presumptions of compliance in the interim final rule achieve the purposes of the Act and should be finalized.

In addition, we respectfully ask the Board to consider the following:

- Given the market-based factors that must be used to arrive at "customary and reasonable" rates, including adjustments that result from negotiated volume-based discounts, "customary and reasonable" fees are comprised by a range of fees. The Coalition, therefore, asks the Board to explicitly acknowledge that a range, as determined by using the factors enumerated in the first presumption of compliance, will qualify as "customary and reasonable" compensation for appraisal services.

- We ask the Board to clarify the scope of the appraisal independence rules, and affirm our belief that the rule does not apply to valuations performed for loss mitigation purposes, such as in connection with loan modifications and REO properties.

- We ask the Board to provide additional guidance on the definition of "fee appraiser" for purposes of the rule.

- In response to the Board's request for comments on what constitutes a reasonable period of time within which to report a material failure of compliance under section 226.42(g), we ask the Board to consider a 30 day timeframe.

The Coalition appreciates the Board's willingness to consider additional comments from the public in connection with the interim final rule governing appraisal independence standards and "customary and reasonable" appraisal compensation.

II. FAIR'S COMMENTS TO THE INTERIM FINAL RULE

The Coalition is committed to operating appraisal management companies that uphold the highest standards of appraisal independence, and FAIR commends the Board for writing a comprehensive, well-reasoned interim final rule that reinforces important standards necessary for accurate and reliable appraisals. We also applaud the Board's efforts in crafting presumptions of compliance governing "customary and reasonable" appraisal rates that account for market-driven factors. We appreciate that the Board welcomed input from industry and consumer representatives alike in the course of drafting the interim final rule, and the Coalition believes the Board achieved a workable balance under the Act's statutory structure. Given TILA's consumer protection purpose and the fact that the regulation of compensation paid to individual appraisers will significantly impact the ultimate prices paid by consumers, we believe the Board's development of dual presumptions of compliance reinforces the ultimate purpose of the law, and we ask that those presumptions be finalized as drafted in the interim final rule. Below we discuss the Coalition's collective comments to the interim final rule and provide responses to certain of the questions raised by the Board in its solicitation of public comments.

A. "Customary and Reasonable" Appraisal Rates are Rightly Established by the Marketplace

Appraisal reports and services are not one-size-fits-all, and the Coalition agrees with the Board that the marketplace should be "the primary determiner of the value of appraisal services, and hence the customary and reasonable rate of compensation for fee appraisers." 75 Fed. Reg. 66554, 66569 (Oct. 28, 2010). Despite claims from some individual appraisers that the compensation they receive is unreasonable, appraisal fees are market driven, controlled by the appraisers themselves, and reflect appraiser-imposed adjustments based on the services performed by the appraiser, services performed on the appraiser's behalf by other parties (including AMCs), and the appraiser's desired source of appraisal orders. For instance, on any given day, an appraiser may be required to adjust the services he or she performs on a property-by-property basis in light of the types of properties being appraised (including rural properties, urban properties, or a home plus

acreage, to name a few), requests for rush or priority appraisals, specific lender-imposed requirements (e.g., for additional photos of the property, additional comparable properties, or special analyses), or municipality-specific requirements for appraisals. It follows that the appraiser should be paid based on the exact scope of work performed, and the truest measure of a "customary and reasonable" fee is whether an appraiser receives a fee that represents fair market value for the services performed by the appraiser.

Moreover, a competitive market necessitates compensation variations that result from voluntary price adjustments and other factors. When an appraiser elects to become a member of an AMC's panel of appraisers, the appraiser receives certain benefits and cost savings in connection with AMC appraisal assignments, including marketing services, customer service, invoicing services, access to technology, continuing education classes, and quality control reviews. In exchange for these costs incurred by AMCs for the services provided on the appraiser's behalf, individual appraisers charge less for their appraisal services when orders are received from AMCs. Appraisers also set their fees based on other factors, including any negotiated volume-based discounts and the appraiser's own qualifications. As a result, there is no single "customary and reasonable" appraisal rate, and the Coalition applauds the Board for recognizing the complexities of the services provided by individual appraisers and AMCs in the course of producing real estate appraisals.

The Board's first presumption of compliance with the "customary and reasonable" appraisal rate requirements will allow lenders and AMCs to pay appraisal prices that are market driven and reflect variations in the scope of work performed by appraisers, the nuances of individual transactions, the costs associated with producing appraisals in different markets, including appraisal orders received from AMCs, and the appraiser's internal pricing factors. The Coalition, therefore, supports the approach taken by the Board that recognizes "the role of the marketplace in determining rates for appraisal services and the importance of accounting for factors that can cause variations in what is a customary and reasonable amount of compensation on a transaction-by-transaction basis." 75 Fed. Reg. 66554, 66569 (Oct. 28, 2010). We believe that making adjustments to recent appraisal rates based on the six factors enumerated in the interim final rule and without any anticompetitive influences will truly result in fair and accurate compensation for appraisal services. And, given that nearly 70% of all appraisals are ordered through AMCs, we agree that market-based compensation can only be determined by allowing lenders and their agents to consider information that includes appraisals ordered by AMCs.

FAIR also appreciates the Board's emphasis on the fact that a "customary and reasonable" rate can be arrived at through good faith negotiations between a creditor or its agent and an appraiser, which may necessitate the sharing of appraisal rates submitted by other appraisers. Discounts negotiated between creditors and appraisers based on the volume of multiple appraisal assignments also provide important benefits to consumers, and we appreciate the Board's emphasis on this market-based pricing factor. It is important to note, however, that a negotiated volume discount cannot itself be considered the standard for a "customary and reasonable" rate. "Customary and reasonable" rates are comprised by a range of fees, one of which may be a negotiated volume discount. Thus, the Coalition asks that the Board explicitly acknowledge that such a range, as determined by adjustments using the factors enumerated in the first presumption of compliance, will qualify as "customary and reasonable" compensation for appraisal services.

B. The Coalition Seeks Clarification on the Scope and Coverage of the Valuation Independence Rule

We ask the Board to clarify the scope of the appraisal independence rules, and affirm our belief that the rule does not apply to valuations performed for loss mitigation purposes. We believe Congress intended for the appraisal requirements to apply to credit extended for the origination of a loan secured by a borrower's principal residence. This is evidenced by the express language in section 129E(f) of TILA, which prohibits a creditor from extending credit if it knows, at or before consummation, of a violation of the prohibition on coercion or of a conflict of interest. The Board also implicitly acknowledges the limited scope of the rule in describing the compliance date. It suggests that the current appraisal independence rules apply to applications for closed-end extensions of credit before April 1, 2011 "regardless of the date on which the transaction is consummated." See Reg Z comments 226.1(d)(5). For applications received after April 1, 2011, a creditor must comply with the new requirements.

Lastly, a conclusion that the appraisal independence provisions do not apply to appraisals performed after origination, such as in connection with a creditor's loss mitigation activity, would be consistent with the Board's current appraisal independence rules in Regulation Z, as well as the Home Valuation Code of Conduct ("HVCC"), which the TILA requirements supersede. As stated in the Board's Commentary to Regulation Z, the Board's current appraisal independence requirements (along with the other provisions published on July 30, 2008), do not

apply to "a modification of an existing obligation's terms that does not constitute a refinance loan under § 226.20(a)." See Reg Z comments 226.1(d)(5). We ask that the Board affirm our conclusion that the appraisal independence requirements do not apply to activities performed after origination.

We also request clarification concerning the definition of "fee appraiser" and its applicability to appraisal firms. The Board appears to suggest that an appraisal firm that employs its appraisers on a W-2 basis would be considered a "fee appraiser" under the second prong of the definition. It is less clear whether an appraisal firm that hires appraisers as independent contractors (as opposed to W-2 paid employees) would be considered a "fee appraiser." The interim final rule provides, in relevant part, that a fee appraiser includes a company that employs appraisers, receives a fee for performing appraisals, and is not subject to the requirements of section 1124 of FIRREA. The Board does not provide its reason for concluding that such a company would not meet the definition of an "appraisal management company" in FIRREA.

The Board suggests that "many appraisal companies or firms often pay their appraisers on an hourly basis and provide their employees with office services as well as health insurance and other employment benefits." We do not believe this statement accurately reflects the marketplace. In fact, many appraisal companies and firms retain appraisers on a panel, like larger AMCs; conversely, many larger AMCs also engage a significant number of appraisers as employees, rather than as independent contractors. We seek clarification as to whether appraisal firms that do not engage appraisers as W-2 employees would be considered "agents" of the lender, and subject to the customary and reasonable fee provisions.

C. FAIR Coalition's Response to the Board's Specific Request for Comments

The FAIR Coalition supports the definition of "appraisal management company" in the rule as currently written. The effect of the proposed definition of AMC is that fee schedules, studies and surveys relied upon to satisfy the "alternate presumption of compliance" must exclude data on compensation paid by AMCs without regard to the size of any AMC's panel. We believe this is appropriate because given the absence of a statutory definition of AMC for this purpose, there is no evidence the Congress intended to differentiate between larger and smaller AMCs.

The Board requests comment on whether the final rule should expressly prohibit basing an appraiser's compensation on an appraiser's membership or lack of membership in a particular appraisal organization. The FAIR Coalition would support this additional prohibition. We believe it is worth clarifying that an appraiser's membership in a particular organization does not constitute a relevant qualification that would command a higher or lower rate. The FAIR Coalition believes that membership has no direct bearing on an appraiser's competency or qualification, and therefore supports a clear prohibition against using such information to calculate an appraiser's compensation.

The Board also seeks comment on the requirement to report appraiser misconduct. The FAIR Coalition proposes that a reasonable time to report misconduct is thirty days following the formation of a "reasonable basis" to believe that an appraiser has not complied with the law or applicable standards. We acknowledge and support the clarification of what constitutes a "reasonable basis" to believe noncompliance has occurred. We also support the requirement that the misconduct is reportable only if it is likely to significantly affect the value assigned to the property.

D. Industry Sentiment that Higher Appraiser Fees Mean Higher-Quality Appraisals is Misplaced

The Coalition recognizes that the quality of work performed by fee appraisers is one of six factors to be considered in establishing "customary and reasonable" compensation, and we agree with the Board that appraisers who consistently exhibit sub-standard performance should not be compensated at the same rate as other appraisers. That said, we disagree with sentiments expressed by individual appraisers and appraisal firms in public comments to the interim final rule that the fees paid to appraisers conducting business with AMCs correspond to lower-quality appraisals. Stated differently, these public comments suggest that appraisers receiving higher appraisal fees perform higher quality appraisals.

However, appraisal reform exists today in large part because of the actions of overzealous mortgage brokers and lenders that sought to influence the appraised values of real property and drive up housing prices in a booming housing market. These originators allegedly promised future business to appraisers and paid higher prices for the appraisal reports to coerce favorable valuation conclusions from appraisers. Thus, prior to the HVCC and other regulatory requirements regarding appraiser independence standards, higher appraisal fees were the custom for many appraisers. Yet, an appraisal with an inflated value, by definition, is of poor quality.

It is important to emphasize that higher fees paid to appraisers do not automatically correspond to higher-quality appraisals.

More specifically, AMCs are known for returning high quality appraisals as a result of the many services they perform. AMCs play a crucial role in ensuring the selection of experienced and qualified appraisers. They ensure that only licensed, insured, experienced and qualified appraisers perform appraisals, and they consider each vendor's qualifications to perform appraisals in particular markets and on various types of property transactions before identifying a particular appraiser for a specific project assignment. AMCs require appraisers to satisfy rigorous qualification criteria and provide business references before admitting them to their networks, and they often offer continuing education courses that help appraisers stay informed of changes in the market and current federal, state, and lender guidelines. If vendors fail to continuously meet these qualifications or are deemed to produce substandard appraisals, AMCs will remove these appraisers from the networks.

Moreover, AMCs are intimately familiar with the complex federal and state laws and regulations that govern appraisals and, thus, are in the best position to ensure appraisers' compliance with them. AMCs provide technologies that facilitate appraisers' workflow and enhance the quality of their work. AMCs also provide ongoing, independent quality control reviews of appraisers to verify the appraiser's adherence to USPAP and applicable federal and state laws, and to help ensure the provision of independent, unbiased, quality appraisal reports. As part of these quality control reviews, AMCs examine appraisal reports to ensure that all applicable regulations are satisfied. To the extent clarification or other information is required from the appraiser, AMCs ask for this information to support the valuation conclusions reflected in the final appraisal report. The result is that AMCs provide appraisals of the highest quality and integrity to lenders that reasonably reflect accurate property values.

Yet, in return for these technology and review services, as well as the other benefits offered by AMCs, many appraisers are willing to accept an appraisal fee that is less than the fee he or she might otherwise charge when the appraiser generates his or her own appraisal orders, which was true well before the HVCC went into effect. In fact, one of the primary reasons that appraisers join panels administered by AMCs is to save the costs otherwise incurred for marketing their own services, generating work, managing client relations, collecting fees from lenders, obtaining necessary continuing education, and maintaining up-to-date technology. *Valuation Review*, a publication devoted entirely to the real estate

appraisal industry, cited in a 2008 article that two-thirds of appraisers anticipated marketing to be one of their top three business priorities for 2009.[2] AMCs, however, remove this marketing burden from appraisers. Thus, in exchange for the many costs incurred by AMCs and the services provided by AMCs on the appraiser's behalf, individual appraisers charge less for their appraisal services when orders are received from AMCs.[3] However, this price in no way reflects the quality of the final appraisal product; in fact, as discussed above, AMCs provide an important oversight function and make it a priority to deliver only the highest quality appraisals.

Accordingly, when certain parties suggest that higher quality appraisals require higher "customary and reasonable" fees, we believe this is not an accurate representation of the current appraisal market. While the Coalition recognizes that quality is a significant factor in determining whether an appraisal is paid at a "customary and reasonable" rate, we caution the Board against equating higher appraisal rates with higher-quality appraisals. Quality is already a factor reflected in the fees that appraisers receive when appraisal orders are obtained through AMCs.

III. CONCLUSION

The Coalition appreciates the Board's consideration of these comments. As we have discussed, AMCs are and have been an integral part of the valuation industry for more than 25 years. Given the requirements of the interim final rule, AMCs will continue to serve an important role in the fulfillment of appraiser independence and the delivery of quality appraisals in a cost-effective manner. This is particularly the case under a rule that will allow lenders and their agents to determine "customary and reasonable" appraisal rates by considering the actual services provided by appraisers and other variances affecting appraisals in each transaction. We believe that consumers are best served when the market determines the value of appraisal services.

We also ask the Board to clarify that the appraisal independence rules do not extend beyond the loan origination context, and to provide additional guidance on

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[2] See The Results are In: 2008 Appraiser Marketing Survey, Valuation Review (Nov. 24, 2008).

[3] As described by one appraiser in the Valuation Review article, he opted for "a higher volume of appraisals at a lesser fee, (rather) than spend time collecting money, arguing with Realtors/loan officers/borrowers about value . . . . In the long run, this marketing strategy has worked for us. We spend most of our time doing actual appraisal work and not chasing lost fees or pounding the streets for new clients." The Results are In: 2008 Appraiser Marketing Survey, Valuation Review (Nov. 24, 2008).

We also ask the Board to clarify that the appraisal independence rules do not extend beyond the loan origination context, and to provide additional guidance on the definition of "fee appraiser" for purposes of the rule. In response to the Board's request for comments on what constitutes a reasonable period of time within which to report an appraiser's misconduct, we ask the Board to consider a 30 day timeframe.

If we can provide any further information or clarification of the views expressed herein, please do not hesitate to contact us.

Sincerely,

LSI / Lender Processing Services, Inc.

CoreLogic, Inc.

ServiceLink Valuation Solutions, LLC

PCV/Murcor

Rels Valuation