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Via email to regs.comments@federalreserve.gov

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

Comments to Docket No. R-1394

Dear Ms. Johnson:

I have reviewed the interim final rule amending Regulation Z that implements Section 129E of the Truth in Lending Act, and have the following comments.

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The Board of Governors requests comments 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.

As you know, 12 CFR § 225.66 (a) states *" A State certified appraiser or a State licensed appraiser may not be excluded from consideration for an assignment for a federally related transaction solely by virtue of membership or lack of membership in any particular appraisal organization."* Since federal law prohibits exclusion, it should also prohibit basing an appraiser's compensation on the lack of membership in an organization.

There are several national appraisal organizations with a long history of producing high quality appraisers who have demonstrated their competence through additional education, years of experience, and passing a comprehensive examination. If this factor were to be retained, the question arises as to which appraisal organizations will "count". If a designation from or membership in an organization becomes a factor in determining the amount of an appraisal fee, smaller organizations may begin to offer designations in order to gain financial advantage for their members. For example, a group of appraisers in a county may incorporate solely for the reason of offering designations to its members. A creditor from another state may not realize that the only qualification to obtain this designation is to reside in the county; there may be no additional educational or experience requirements, just the payment of a fee to the organization.

Even if a designation comes from a recognized appraisal organization, the question arises as to which designations within the organization demonstrate the ability to perform appraisals of owner occupied residential property. The creditor is then put in the position of determining which designations or memberships may be acceptable and which will not.

The Board of Governors asks for comments as to whether the factors in §226.42(f)(2)(i)(A)-(F) are appropriate, and whether other factors should be included.

In short, there are already too many factors included in this section.

A better way to address this is as follows. There should be a base appraisal fee, with an increase of the fee allowed or mandated for the type of the property appraised and the scope of work for the assignment. Scope of work includes such considerations as turnaround time, type of inspection, etc. A base appraisal fee would assume that the appraiser is competent to perform the assignment, has the necessary minimum qualifications and experience necessary for the assignment, and produces quality work.

Allowing a reduced fee for certain factors may result in an overall decrease in the quality of appraisals. Creditors or their agents would have an incentive to hire appraisers who would qualify for a reduced fee, such as appraisers who have little experience, who have several disciplinary actions on their record, or who have performed poor quality appraisals in the past for the creditor. Although such appraisers may be willing to work for a reduced fee, the creditor relies on their appraisals just as much as those for which they pay an enhanced fee. The type of property and scope of work are the same, so the fee should be the same.

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The Board of Governors asks for comments as to whether and on what basis the final rule should give a safe harbor for relying on a fee study or similar source of compiled fee information. The Board of Governors also asks what additional guidance may be needed.

The only safe harbor that should exist should be a fee schedule from a state or federal governmental agency, such as the Veteran's Administration. Academic studies or surveys may be acceptable if they are ordered by such an agency, but not if they are ordered by appraisers, appraisal organizations, appraisal management companies or creditors. The concern is that the entity ordering the study or survey could set the parameters for the study in such a way that it skews the results. Since objectivity is the goal, a state or federal governmental agency should be the only one who could order a study.

Additional guidance is needed regarding when fees will be updated. A fee schedule set in 2010 during an economic slowdown, for example, may be outdated in 2013 when the economy has revived. The proposed rules should require a reexamination of fees on a regular basis, such as every two or three years.

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The Board of Governors asks for comments on whether reporting should be required only in a material failure to comply causes the value assigned to the dwelling to differ from the value from the value that would have been assigned had the material failure not occurred.

It is understood that appraisers can and do make mistakes on appraisals. Creditors and appraisal management companies have methods to discover errors and request corrections. Most experienced reviewers can tell the difference between minor technical violations as opposed to unethical conduct.

The rule states that creditors and their agents have a duty to report a material failure only if it results in a value difference. The rule should go further and state that creditors and their agents should report a material failure to comply with law, rules or USPAP, even if value is not affected in a significant manner. Otherwise, creditors and their agents may believe that not only do they not have to report a material failure when value is not an issue, they may in fact be discouraged from doing so. The danger is that the states will miss significant cases of appraiser misconduct, allowing incompetent or unethical appraisers to continue working as long as they somehow manage to find a value within an acceptable range.

It is possible that the current proposed rule and an additional encouragement to report material violations may result in increased numbers of complaints to state appraiser licensing boards. Although few state boards have the resources to fully process and investigate an increase in the number of complaints, the boards exist to protect the public's interest and, in the interest of consumer protection, we will find a way to handle any increased caseload. Our responsibility to the public is too important to try to discourage complaints from being filed against unethical or incompetent appraisers.

The Board of Governors requests comments on what constitutes a reasonable period of time within which to report a material failure.

A reasonable period of time would be 180 days or six months from the time the error is discovered. By the time the creditor or agent discovers the error, it could be years since the appraisal was performed. Some states have a statute of limitations on when they can accept complaints, so the sooner the complaint is sent to the state board, the better.

Thank you for the opportunity to comment on the proposed rule.

Very truly yours,

Donald T. Rodgers
Executive Director

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