



VIA USPS Express Mail

August 25, 2010

Chairman Ben S. Bernanke
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Interim Final Regulations Implementing Section 129E of the Truth in Lending Act

Dear Chairman Bernanke:

TAVMA is a non-profit professional organization headquartered in Pittsburgh, Pennsylvania, that represents more than 80 companies engaged in the real estate settlement services industry including 58 appraisal transaction management companies (AMCs). TAVMA promotes the appraisal transaction management industry and supports its members' right to do business without unfair and/or anticompetitive regulations, and provides useful information about issues impacting the real estate settlement services industry.

This letter is submitted to you to urge the Federal Reserve Board (FRB) to delay implementation of the appraisal fee provision in Title XIV of the Dodd-Frank Act in order to allow the FRB sufficient time to define and analyze the implications of the so-called "customary and reasonable" appraisal fee provision of the Act.

Title XIV (Sec. 1400 et seq) of the Dodd-Frank Bill contains the "Mortgage Reform and Anti-Predatory Lending Act", which includes Subtitle F-Appraisal Activities. Section 1472 of the Act adds Section 129E to TILA which will establish minimum federal appraisal independence requirements (largely consistent with state regulations and HVCC). Section 129E(i) contains the following "Customary and Reasonable Fee" requirement:

- (1) In General.—Lenders and their agents shall 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 such fees may be established by objective third-party information, such as government agency fee schedules, academic studies, and independent private sector surveys. Fee studies shall exclude assignments offered by known appraisal management companies.

Effective Date of Appraisal Requirements

At present it is unclear whether the “customary and reasonable” provision should be adopted in the 90 day interim final regulations. TAVMA believes that the effective date should be delayed under Title XIV Section 1400(c)(3) until after a formal rule making process. Additionally, we believe that the provision should not be adopted yet, because the “customary and reasonable fees” requirement is not an appraisal independence requirement. Further, the fee provision was added late in the Congressional Conference Committee process and never received any meaningful legislative discussion or clarification.

We understand that Title XIV of the Dodd-Frank Act requires that lenders (and AMCs as their agents) be responsible for ensuring that appraisers are paid a “customary and reasonable fee.” As will be reviewed below, this is at best a vague standard lacking any coherent definition particularly given the penalties that may be applied if a fee not meeting this standard is used. At present, there is no definition of or clarity about what constitutes a “customary and reasonable” appraisal fee under Title XIV of the Dodd-Frank Act. In addition, it is unclear what appraisal product types are implicated in the statute and there are no readily available authoritative surveys to gauge what constitutes a “customary and reasonable fee” across the country (assuming that this is a workable standard). Unfortunately, such a survey cannot be designed, distributed, compiled, analyzed, validated, and published prior to the October 20, 2010 effective date for the interim final rule.

For these reasons, which are expanded upon below, we urge the FRB to grant an extension to the effective date of the appraisal provisions in Title XIV of the Dodd-Frank Act.

“Customary and Reasonable” Appraisal Fees – The Statutory Provision

Section 129E(i) quoted above suggests that there is a readily available “customary and reasonable” appraisal fee from market to market. There is, however, no readily identifiable source of “customary and reasonable appraisal fees” nationally, by state, county, or other governmental division.

“Customary and Reasonable” – HUD’s Prior Use of the Term

The term “customary and reasonable fee” as it relates to appraisal fees did not originate with Title XIV of the Dodd-Frank Act; it originally appeared thirteen years ago in U. S. Department of Housing and Urban Development (HUD) Mortgagee Letter 97-46 (available at: <http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/files/97-46ml.txt>). The term remained largely obscure until 2009, when HUD issued Mortgagee Letter 2009-28 (available at: <http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/files/09-28ml.pdf>). The 1997 Mortgagee Letter states that FHA-approved lenders must ensure that “FHA Roster appraisers are compensated at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised.” The Letter adds that “AMC and other third party fees must not exceed what is customary and reasonable for such services provided in the market area of the property being appraised.”

Notable by its absence from the 1997 Mortgagee Letter is a definition of what constitutes a “customary and reasonable fee”, how it should be calculated, or whether HUD considers it to be a single-point fee, or a range from market to market and product to product. The 1997 Letter contained no guidance on how to determine the “customary and reasonable fee.”

After 13 years, HUD clarified what it (and TAVMA) believes to constitute a customary and reasonable fee, in its **AMCs/Reasonable and Customary Fees/Turnaround Time FAQs** (available at: http://www.hud.gov/offices/hsg/sfh/appr/faqs_fees-time.pdf). The FAQs indicate that the market determines what is customary and reasonable.

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.

HUD added that, because such fees “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** (emphasis added).”

This appears to reflect HUD’s stance on the importance of the free market system and negotiated pricing of settlement services; a system that has been in place for 30+ years without government intervention in fee-setting.

The wording of 129E(i) Appraisal independence requirements, “Customary and Reasonable Fees” seems to either ignore or outright reject FHA’s and HUD’s prior interpretation; however, it fails to provide any direction or guidance about what the term means and/or how it is to be calculated other than that fees negotiated with AMCs should be excluded from the determination, i.e., that market participants should ignore the predominate fee model now in use. It is unreasonable given this history and marketplace realities to expect the FRB to formulate a definition of “reasonable and customary fees” within the few weeks leading up to the October 20, 2010 effective date of the interim, final rule.

The lack of clarity about what constitutes “Customary and Reasonable Fees” generates complex questions that the Interim Final Regulations Implementing Section 129E would need to address.

Scope of the Appraisal and Appraisal Report. Scope of work is influenced by not only USPAP compliance but also GSE (Fannie/Freddie) underwriting guidelines. Does the rule regard mortgage appraisals only? What about instances in which the client adds special instructions? What about appraisals ordered as a “rush job” and so-called “batch appraisal orders” under a longer timeframe? Would foreclosure, divorce, and estate appraisals be covered?

Range of products covered. Does the fee requirement extend to additional (or all) valuation transactions, such as review appraisals, desk reviews, and alternative (Fannie/Freddie) appraisal products? What about non-mortgage origination transactions, such as default servicing, portfolio analysis, etc.? We believe the introductory language to Section 129E limits the application of the

section to origination transactions. If so, how will non-origination fees be culled from the population of appraisals that make up the pool of appraisals defining the customary and reasonable fee for a given area? Is the section limited to federally-related transactions under FIRREA only or are non-federally related transactions included as well?

Fee discounting. May a lender (or AMC) and the appraiser negotiate a discounted fee? And if not, why not? Will the consumer be required to pay higher fees due to the lack of market-driven fee negotiations between lender clients and appraisers?

Target-setting. Is the “customary and reasonable fee” necessarily a range of fees for different product types and scopes of work in each different location? What are the legal implications for each of these (or other) alternatives?

Compliance reporting. How will lenders demonstrate compliance with this mandate?

Fee charge-backs. Can AMCs charge the appraiser a technology transfer, client acquisition, or administration fees? Many transaction management systems charge a technology or “platform” fee to upload the order and/or finished appraisal and deliver it electronically to the lender or AMC’s portal.

Appraiser Trainees. Fee parity (non-negotiated fees) will create a preponderance of “experienced appraisers,” which on one hand is good in that the most experienced appraisers will compete on quality and service for assignments; however, what will be the impact on appraiser-trainee development? Will appraisal firms have any motivation to train new appraisers, and will less experienced appraisers be able to compete for appraisal work if fees are not a factor?

Anti-trust. Will “customary and reasonable fees” effectively create a price-fixing problem that will adversely impact consumers and the market?

Regulatory enforcement. Who will enforce compliance? The state appraisal boards? The FRB, due to the apparent misplacement of this issue within a TILA amendment? The new Consumer Financial Protection Bureau?

There are no readily available authoritative surveys to gauge what constitutes a customary and reasonable fee from one jurisdiction to the next

As noted, Section 129E(i) suggests that there is a readily available and reliable means to gauge whether a fee is customary and reasonable.

Evidence for such fees may be established by 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.

Yet, only one agency, the Veterans Administration (VA), publishes an appraisal fee schedule, (available at: http://www.benefits.va.gov/homeloans/fee_timeliness.asp). These fees, however, are higher than many consumers will expect to pay in a retail mortgage transaction. Moreover, VA loan

appraisal fees do not purport to be “customary and reasonable” for non-VA loans. Rather, they reflect “maximum allowable fees for the appraisal type” according to the VA website. Thus lenders, AMCs, and appraisers that use the VA fee schedule are very likely to distort (by artificially inflating) appraisal fees in most markets. This could become a self-perpetuating problem, as higher “customary and reasonable” fees for non-FHA work may have the effect of increasing VA appraisal fees resulting in a vicious cycle.

Conclusion

The final implementing regulation must consider these complex issues before establishing a workable and accurate set of “customary and reasonable fees.” Unfortunately, a credible source of “objective third-party” fee information simply does not exist at this time. The premature adoption of the fee provision will cause unanticipated harm AMCs, lenders, and consumers, and likely will adversely affect competition among appraisers.

For these reasons, TAVMA requests that the FRB delay the “customary and reasonable” fee provision of the proposed interim final rule. More time is needed for surveys and accurate studies to be completed. Furthermore, input from the Government Accounting Office on this issue should be allowed, as part of its mandated study of the appraisal process.

Please contact me at (724) 934-1420 or jeff@tavma.org to discuss any questions you may have. TAVMA would be glad to assist your agency throughout its deliberations of the Interim Final Regulations Implementing Section 129E(i) of the Truth in Lending Act.

Thank you for your consideration.

Sincerely,



Jeff Schurman
Executive Director

cc: Mortgage Bankers Association
Housing Policy Council
Consumer Mortgage Coalition