

December 7, 2010

**VIA Federal Express**

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

Re: Interim Final Rule Implementing Section 129E of the Truth in Lending Act:  
Docket No. R-1394/RIN No. AD-7100-56

Dear Secretary Johnson :

We represent a coalition of the largest Fee Appraisal Companies in the United States. The primary members of our coalition are Forsythe Appraisals, William Fall Group and Metro-West Appraisal. Founded in 1940, Forsythe employs over 225 employee staff appraisers in the company, and serves more than 5,000 customers in the residential real estate industry, including national banks, regional banks, local banks, mortgage servicers, and appraisal management companies. Forsythe is headquartered in Saint Paul, Minnesota, and operates 35 branches across the United States. Originally founded in 1955, William Fall Group is a provider of comprehensive real estate valuation services to the financial, public and government sectors. Headquartered in Toledo, Ohio, Fall Group's 175 employee staff appraisers provide real estate appraisal services out of 44 offices in 15 states. Founded in 1987, Metro-West Appraisal serves local, regional, and national real estate industry customers out of 35 branch offices in 20 states. Metro-West is headquartered in Northville, Michigan, and employs over 130 employee staff appraisers.

On October 18, 2010, the Board of Governors of the Federal Reserve System (the "Board") published an Interim Final Rule and Request for Public Comment regarding appraisal independence and compensation standards under Section 129E of the federal Truth-in-Lending Act ("TILA"). This letter is being submitted to urge that the Board revise the Rule's definitions of "fee appraiser" and "appraisal management company" in order to clarify the scope of the Rule, and avoid any unintended consequences or confusion surrounding the Rule's requirements for the appraisal industry.

Please find below our recommendations for amendments to the definitions of "fee appraiser" and "appraisal management company" contained in the Rule.

**I. Definition of "Fee Appraiser" in Section 226.42(f) of Regulation Z**

The Rule creates Section 226.42(f)(1) of Regulation Z, the federal regulation that implements TILA, and requires that creditors and their agents compensate *fee appraisers* for performing appraisal services at a rate that is customary and reasonable for comparable appraisal services performed in the geographic market of the property being appraised. Specifically, Section 226.42(f) of Regulation Z implements Section 129E of TILA, which was enacted on July 21, 2010 as Section 1472 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). Section 129E of TILA created new requirements for appraisal independence for consumer credit transactions secured by the consumer's principal dwelling.

Importantly, Section 226.42(f)(1) of Regulation Z clarifies that “agents” of the creditor do not include any fee appraiser as defined in paragraph (f)(4)(i) of Section 226.42. The Board clearly excluded fee appraisal companies (“FACs”) from the requirement of providing customary and reasonable compensation for a logical and compelling reason, namely that FACs also pay their employee staff appraisers a form of salary and provide them with office services as well as health insurance and other employment benefits. The Board notes this fact regarding FACs and their employee staff appraisers in the Section-by-Section Analysis of the Rule. Thus, if TILA required FACs to pay their employee staff appraisers customary and reasonable fees for each appraisal assignment, those companies would be unduly financially burdened, and such a requirement may undermine their viability as a provider of appraisal services - which the Board believes would ultimately harm consumers by reducing competition in the market. The Board also notes this rationale regarding competition in the market in the Section-by-Section Analysis of the Rule.

However, in order to ensure that only FACs, and not appraisal management companies (“AMCs”) or other hybrid appraisal companies that function primarily like AMCs, are excluded from the requirement to provide customary and reasonable fees, we believe the definition of “fee appraiser” should be further clarified. We respectfully suggest that the definition of “fee appraiser” in Section 226.42(f)(4)(i) of Regulation Z should be amended to clarify that the defined term includes *only* companies that employ state-licensed or state-certified appraisers on a W-2 employment basis. Specifically, we propose that a new clause “***on a W-2 employment basis***” be added to the existing definition of “fee appraiser” after the phrase “employs state-licensed or state-certified appraisers.” The proposed definition “fee appraiser” in Section 226.42(f)(4)(i) as revised with our amendment in bold italics, would read as follows:

- (i) Fee appraiser. The term “fee appraiser” means--
  - (A) A natural person who is a state-licensed or state-certified appraiser and receives a fee for performing an appraisal, but who is not an employee of the person engaging the appraiser; or
  - (B) An organization that, in the ordinary course of business, employs state-licensed or state-certified appraisers ***on a W-2 employment basis*** to perform appraisals, receives a fee for performing appraisals, and is not subject to the requirements of section 1124 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.).

Further, the Rule also creates Paragraph 42(f)(4)(i) of the Official Staff Commentary to Regulation Z (the “Commentary”), which can be amended in a corresponding manner, to further clarify the meaning of “fee appraiser” in Section 226.42(f)(4)(i) of Regulation Z. We propose adding a new section to Paragraph 42(f)(4)(i) of the Commentary, which would be cited as Paragraph 42(f)(4)(i)-2 and read as follows:

***2. W-2 employment basis. The term “W-2 employment basis” in Section 226.42(f)(4)(i) means the classification of natural persons as employees using the Internal Revenue Service’s right-to-control test under the common law agency doctrine, with the results of such test generally determining whether an organization files a W-2 or a 1099 for the person. This meaning of “fee appraiser” in Section 226.42(f)(4)(i) necessarily excludes an organization that utilizes persons on a 1099-basis for the completion of appraisals.***

## II. Definition of “Appraisal Management Company” in Section 226.42(f)(4)(iii) of Regulation Z

The Rule also creates Section 226.42(f)(3) of Regulation Z, which states that creditors and their agents will be presumed to comply with the requirement to compensate fee appraisers for performing appraisal services at a rate that is customary and reasonable if the creditor or its agent determines “the amount of compensation paid to the fee appraiser by relying on information about rates that:

1. Is based on objective third-party information, including fee schedules, studies, and surveys prepared by independent third parties such as government agencies, academic institutions, and private research firms;
2. Is based on recent rates paid to a representative sample of providers of appraisal services in the geographic market of the property being appraised or the fee schedules of those providers; **and**
3. In the case of information based on fee schedules, studies, and surveys, such fee schedules, studies, or surveys, or the information derived therefrom, ***excludes compensation paid to fee appraisers for appraisals ordered by appraisal management companies as defined in paragraph (f)(4)(iii) of this section.***”

This concept is taken from Section 129E of TILA, as implemented by Dodd-Frank, which excluded from fee studies assignments ordered by AMCs. Section 226.42(f)(4)(iii) defines “appraisal management company” as any person authorized to perform one or more of the following actions on behalf of the creditor:

1. Recruit, select, and retain fee appraisers;
2. Contract with fee appraisers to perform appraisal services;
3. Manage the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and compensating fee appraisers for services performed; **or**
4. Review and verify the work of fee appraisers.

The Board took the majority of this definition of “appraisal management company” verbatim from Section 1124 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (“FIRREA”), which was enacted by Dodd-Frank, and requires in pertinent part that AMCs register with state regulatory bodies. However, in order to clarify that the definition of “appraisal management company” exclude FACs from its meaning, we respectfully suggest that the definition in Section 226.42(f)(4)(iii) of Regulation Z should be amended to specifically state that FACs are not covered within the meaning of “appraisal management company.” Note that this will also ensure that that only AMC fee surveys and data are excluded from the pricing rate determinations. Specifically, we propose that a new clause ***“other than a person or organization that meets the definition of “fee appraiser” as that term is defined in paragraph (f)(4)(i)”*** be added to the existing definition of “appraisal management company” after the phrase “means any person.” The proposed definition “appraisal management company” in Section 226.42(f)(4)(iii), as revised with our amendment in bold italics, would read as follows:

(iii) Appraisal management company. The term "appraisal management company" means any person, ***other than a person or organization that meets the definition of "fee appraiser" as that term is defined in paragraph (f)(4)(i)***, authorized to perform one or more of the following actions on behalf of the creditor--

- (A) Recruit, select, and retain fee appraisers;
- (B) Contract with fee appraisers to perform appraisal services;
- (C) Manage the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and compensating fee appraisers for services performed; or
- (D) Review and verify the work of fee appraisers.

### III. Conclusion

We believe that making the aforementioned changes to the definitions of "fee appraiser" and "appraisal management company" would greatly help to clarify the scope of the Rule, and avoid any unintended consequences or confusion surrounding the Rule's requirements for the appraisal industry. Further, please do not hesitate to contact any of us directly at the phone numbers or email addresses provided below if you have any questions or would like any follow-up information regarding anything contained herein. Finally, we would be happy to meet or have further discussions about the impact of the final Rule with the Board, should the Board believe such discussions would be worthwhile.

Thank you for your time and consideration of this letter.

Sincerely,

John F. (Jeff) Turner  
Chairman, Forsythe Appraisals  
612-333-9922 or jeff@turneric.com

William Fall  
Chief Executive Officer, The William Fall Group  
419-418-5251 or wfall@williamfallgroup.com

Don Rousseau  
President, Metro-West Appraisal  
888-676-9237x5801 or drousseau@metrowestappr.com