



## An Examination of the Reasons to

Exclude “Customary and Reasonable Fee” definition from 90-day rulemaking  
*(Related to Section 1472 of the Dodd-Frank Wall Street Reform and Consumer Protection Act)*

Plain language indicates Congressional intent to bifurcate the rulemaking

- General rulemaking, provided in new Sec. 129E(g)(1), is to be done jointly by the collective federal agencies and without any particular deadlines outside the overall deadlines provided by the Act in general.
- Sec. 129E(g)(1) - the general rulemaking provision - explicitly states that it applies to subsections (a), (b), (c), (d), (e), (f), (h) and (i).
- New Sec. 129E(g)(2) then makes an exception to require specific 90-day, Board-only interim rulemaking limited to, “...defining with specificity acts or practices that violate appraisal independence ...” [emphasis added] - essentially those things contained in new Sec. 129E(b), but with consideration to limitations in new Sec. 129E(c).
- In fact, because new Sec. 129E(b) begins with, “Appraiser Independence - For purposes of subsection (a), acts or practices that violate appraisal independence shall include --“ [emphasis added], the use of that exact phrase in new Sec. 129E(g)(2) strongly indicates, under straightforward legislative interpretation principles, that the interim rulemaking provision should be read as referring to the subsection of that same section of TILA that expressly is so worded (i.e., 129E(b)), and only to that subsection.
- The “Customary and Reasonable Fee” provisions are in a completely separate place (new Sec. 129E(i)), and have nothing to do with appraiser independence, but rather appraiser income.
- If Congress had intended for the “Customary and Reasonable Fee” rulemaking to be included in the 90-day rulemaking, it would have been completely unnecessary - and is in fact contradictory - to have cited subsection (i) in the general rulemaking provision in new Sec. 129E(g)(1).

A clear understanding of the purpose of the 90-day rulemaking supports bifurcation

- The present rules around appraiser independence are contained in the Home Valuation Code of Conduct (HVCC), which are essentially rules promulgated by the GSE’s arising from a settlement with the New York Attorney General. That agreement has expired, and it has resulted in pressure to sunset the HVCC with it. However, Congress clearly believes that the appraiser



independence standards it wrought were important enough to codify into federal law.

- If the HVCC were allowed to sunset prior to the promulgation of federal rules intended to replace it, those important protections would be lost for the period from sunset to general rulemaking.
- To fill that void, Congress decided to require the 90-day rulemaking so that the protections would be uninterrupted.
- New Sec. 129E(j) confirms this Congressional intent by providing clear explanation of why the 90-day rulemaking exception was inserted into the Act - new Sec. 129E(j) sunsets the HVCC on the date the 90-day rules are promulgated.
- Because there are no existing income-protection rules in the present HVCC, there is no need to include those elements in the HVCC-replacement rulemaking.

The complexity of the task requires bifurcation

- It is impossible to understand what would constitute a truly “Customary and Reasonable Fee” for anything without completely understanding the various components of the task (subtasks) that are required to be performed, and exactly what the division of labor may be (who actually performs each of the subtasks).
- The market forces and labor divisions involved in the free market determination of what appraisal fees have been, and who all were legitimately involved in the provision of the final product and therefore properly shared in the overall fee, vary considerably from market to market and often within markets depending on the business model(s) in use at the various providers.
- Conducting the proper level of study in order to accurately provide guidance on how the “Customary and Reasonable Fee” for only one single provider of some of the required subtasks of the process will require careful and intricate insight that cannot be attained under the intense pressure of a 90-day deadline.
- Since appraisal fees are typically borne by the borrower, these regulations will have an immediate and direct impact on the prices paid by consumers. This further warrants adequate time to ensure that the interests of all affected parties are considered in the rulemaking process.