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Subject: Regulation Z -- Truth in Lending

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December 22, 2010 Chairman Ben S. Bernanke, Board of Governors of the Federal Reserve System 20th Street and C Street, Northwest Washington, DC 20551 Docket No. R-1394 RIN No. AD-7100-56 Re: Interim Final Regulations Implementing Regulation Z - Truth IN Lending Act - Section 129E Chairman Bernanke & Federal Reserve Board of Governors: As one boot has been lifted from the neck of the Appraiser, another has taken its place. While the HVCC and H.R. 4173 (Dodd-Frank legislation) took measures in an effort to insure Appraiser and Appraisal independence these legal and legislative acts have further subjected the Appraiser and the Appraisal Profession to new or simply shifted pressure(s). Many of the shortcomings of HVCC have been described as "unintended consequences" with some being corrected or improved with the expiration of HVCC and the passage and implementation of H.R 4173. However, there is still much to be desired from the viewpoint of the Appraiser. As an Appraiser of nearly 20-years, I have generally avoided appraisal management companies (AMC's) like the plague for their unreasonable fee structures and unrealistic demands. AMC's have traditionally been considered to be the devil by many appraisers including myself and have now become an almost entirely necessary evil courtesy of HVCC and H.R. 4173. AMC's have always felt an entitlement to a huge portion of our fees and at the same time have unrealistic expectations for property inspections and turn times, as well as doing the bidding of their client for the "must have value". It is the policy of some AMC's to further reduce or attempt to entirely eliminate the appraisers fee if the turn time or other subjective assignment conditions can't be met regardless of the reason or circumstance. Sub-standard fees and unreasonable expectations will only further expose the intended user, consumer, and the markets to increased risk. AMC's have ridden the backs of Appraiser's for years simply because they were allowed to. If the services of an AMC were so invaluable to the lender, why has the Appraiser been forced to bear the cost? These companies were and remain unregulated (at least temporarily) and do not adhere to any professional

standards, regulations, or code of conduct and have enjoyed operating with impunity. It is blatantly obvious they wish to continue to do so. Like many Appraisers, I've worked long and hard to establish myself in this business and have taken the high road by not playing the game of "give me my value or else". I've fired more than one client over what they needed being less important than what was right. I have made countless thousands of dollars LESS than those willing to simply ignore the standards and ethics set forth in the Uniform Standards of Professional Appraisal Practice and their own conscience all in the name of greed. I guess only the banks were too big to fail, the hell with everybody else. HVCC has left my family and I swinging in the wind. I guess we're too small to matter. How many Appraisers were forced into foreclosure or a short sale due to the HVCC and H.R. 4173? Prior to HVCC, it was difficult for an AMC to prove their worth and existence. They could certainly not justify to an Appraiser why they should surrender 30-60% of an appraisal fee for "transaction management" consisting of simply making a few phone calls or sending e-mails and faxes to assign, retrieve, and deliver an appraisal assignment. While, the services of an AMC have evolved with advancements in technology and the theft of appraisers data; their basic business model has remained the same; take as much as possible from the Appraiser. AMC's may have been valuable to some small or understaffed lenders, but there was and is little value in an AMC for the Appraiser. AMC's have few ways to set themselves apart from the competition. They have used short turn times and other assignment conditions imposed on the Appraiser as marketing tools. This is a disservice to the Appraiser, the Client, and the Consumer. Unreasonably short turn times, in most instances, do not allow an appraiser sufficient time to collect, verify, and properly analyze the data necessary to produce a credible report. Although it is the obligation of the Appraiser to perform their duties in accordance with USPAP, we are capable of recognizing exploitation. Like any professional or specialty service provider we know what our time and expertise are worth. An Appraiser forced to accept a fee established by any other party is simply unacceptable and will only further compromise appraisal quality. We are after all only human and a fee considered to be less than professional can only result in quality that is less than professional. No one can possibly expect with a high level of certainty that a fee structure of 25-years ago and increased work demands will result in a product of higher quality. Few participants in any profession would likely provide the "full service treatment" for a fee that barely surpasses the "tip". Would any of you put forth the same effort in your position if your salary were decreased by 50% or more and now required you to work twice as long? This situation has parallels that resulted in the unionization of autoworkers. They faced unsafe working conditions and unreasonable pay. Like those autoworkers long ago in Flint, Michigan we are faced with unreasonable expectations and unreasonable pay from AMC's. Many Appraiser's and non-real estate related parties have suggested Appraisers simply not accept any work from AMC's, a strike if you will, for an extended period to make a point. If no one will work for a sub-standard fee, no one will make any money, as most transactions will come to a complete standstill. Only then will they be forced to pay a reasonable fee. What would the financial toll of such an action be, I can only imagine. Maybe that is the exact action necessary to unite Appraiser's and give us the voice necessary to be heard in Washington. The Appraisal Profession in its current state, lacks the voice necessary to be heard anywhere, especially in Washington, (at least when it comes to money) which is how we have come to be in the situation we now face. An Appraiser should not be required, coerced, extorted, or pressured in any form to pay a portion of an appraisal fee to obtain an assignment, be on an approved panel, or deliver a completed report, or to reach any specific

conclusion or range of value. Appraiser and Appraisal Independence can only be achieved when Appraiser's are free from ALL pressures and influence. Any fees for the services of an AMC, firewall, or other third party service(s) used to comply with governmental regulations should be borne by the creditor. This is the penance to be paid for their misdeeds, not ours. Appraisers' have already been stiffly sentenced courtesy of HVCC and H.R. 4173 by taking our businesses and handing them over to AMC's and financial institutions resulting in a significant loss or the entire elimination of income and creating a "pay to play" environment. While there are other alternatives to AMC's that are more favorable to the appraiser and still provide creditors with the necessary regulatory compliance, AMC's have been the unfortunate choice of most. One could speculate the reasons behind the AMC decision are many and varied but it's clear this decision wasn't a decision at all; it was a gift. As you know, under HVCC a financial institution could own a maximum of 20% of an AMC. Under H.R. 4173 an AMC can be entirely owned by a federally regulated financial institution and is not required to register with the states in which they operate. This is the fox watching the hen house! Allowing a mortgage lender or financial institution to own any percentage of an AMC or other platform is absurd. This ownership translates to influence regardless of the form or fraction of ownership. This will only continue to provide AMC's, mortgage lenders, and financial institutions the power to lord over Appraisers by continuing to depress appraisal fees and exploit consumers. Appraisers' have more responsibility, liability, and higher operating costs than ever before. The lenders that pressured Appraisers for the "must have" value are now suing them because they got what they wanted and at the price they wanted. This practice has further increased the financial burden on the Appraiser by way of increased liability insurance premiums and a simultaneous reduction of the appraisal fee. Recent changes in education and licensing requirements for Appraisers, is certainly not encouraging young people to consider the appraisal profession as a career choice. While I applaud the changes to the educational requirements, the financial and time commitments for the necessary education does not provide sufficient incentive to pursue a career that may not provide more than \$30,000 a year for 60-80 hour work weeks. Many appraisers have been forced to leave the profession altogether as they can no longer support a family or retain employees on the sub-standard fees that have become dictated by AMC's. While I'm not an attorney, the tactics used by AMC's, lenders and financial institutions could be perceived acts of racketeering, extortion, collusion, or price fixing by legal definition.

extortion n. obtaining money or property by threat to a victim's property or loved ones, intimidation, or false claim of a right (such as pretending to be an I.R.S. agent). It is a felony in all states, except that a direct threat to harm the victim is usually treated as the crime of robbery. Blackmail is a form of extortion in which the threat is to expose embarrassing damaging information to family, friends or the public.

collusion n. where two persons (or business entities through their officers or other employees) enter into a deceitful agreement, usually secret, to defraud and/or gain an unfair advantage over a third party, competitors, consumers or those with whom they are negotiating. Collusion can include secret price or wage fixing, secret rebates, or pretending to be independent of each other when actually conspiring together for their joint ends.

price fixing n. a criminal violation of federal anti-trust statutes, in which several competing businesses reach a secret agreement (conspiracy) to set prices for their products to prevent real competition and keep the public from benefiting from price competition. Price fixing also includes secret setting of favorable prices between suppliers and favored manufacturers or distributors to beat the competition. They have freely used threats and false claims towards the Appraiser to control fees. "If you

want to continue to receive work from us, our client needs x-value", "We will take you off our approved panel or blacklist you if you can't reach x-value for our client". " Our market fee in your area is only x-dollars so our client won't pay your stated fee". "Your fees are too high and our Client will only pay x-dollars for the report, we'll call someone else". "I just ordered an appraisal from another guy and he's doing it for x-dollars less than you, so he's going to get our next orders in your area". "If you'll take the fee of x-dollars, we'll be able to send 15-30 orders a month, week, etc."). These statements, or some variant have more than likely been heard by most Appraisers and could all be construed as threats or false claims. These statements are not simply aggressive negotiating tactics. AMC's/Creditors are using them to take advantage of another (Appraisers & Consumers) for financial gain. This starts a snowball of additional potential violations of federal and/or state law. Racketeering and Extortion are covered under Title 18 U.S.C. §1961 et seq. Part 1 Chapter 96. Should any of these suspected violations be officially investigated and proven to meet their definitions, additional infractions of the RICO Act may also exist. If loan documents were prepared containing false or purposefully concealed information (actual appraisal fee or other settlement charges) and ultimately delivered to the consumer, those infractions may include Mail Fraud (Title 18, Part 1, Chapter 63 U.S.C. §1341) and/or Wire Fraud (Title 18, Part 1, Chapter 63, U.S.C. §1343).

**CUSTOMARY AND REASONABLE FEES** Everybody involved has a point of view that most assuredly benefits that respective position. Many of the comments submitted on the subject of customary and reasonable fees are clearly submitted by attorneys, lobbyists, and TAVMA who are concerned only with their client's interest; the money they have been stealing from appraisers for years. And they do so under the guise of having concern for the consumer. Where was the concern for the consumer before the house of cards came tumbling down? I don't recall any attorneys, AMC's, mortgage lenders, financial institutions, lobbyists, or TAVMA voicing any concern for the consumer while they were handing out garbage loans to un or under-qualified borrowers and bilking pension funds, foreign governments, and mom and pop with deceptively rated mortgage backed securities. How many times were appraisers sent away with a pat on the head telling us this situation is under control, now go back to work? This certainly has the appearance of replacing the income streams lost in the lending business from the deceptive and predatory practices of mortgages, credit cards, and payday loans. The enlightened folks that have come to the "rescue" have the misguided idea those that have perpetrated and are responsible for this financial catastrophe should lose nothing at all, while Appraisers have had everything taken from us without consideration, conscience or compensation courtesy of HVCC and continued with the shortcomings of H.R. 4173. When I entered this profession in 1991 an appraisal fee for a single-family non-complex property reported on the URAR was \$250.00. Today, an appraiser is lucky to see an assignment fee of \$275.00 from an AMC for a URAR, although a lender is charging the borrower \$450.00 - \$600.00 or more for the non-complex single-family URAR report. This is obviously why the majority of AMC's demand that an invoice not be included as part of the appraisal or it be submitted separately. This practice effectively ends the paper trail and allows concealment of the deception from the consumer and allows fee splitting and kickbacks to occur. In this situation, one thing is certain, AMC's do not want to pay an appraiser a fee based on what the appraiser or the market thinks the job is worth. If an AMC were to actually pay an appraisers stated fee for any assignment based on the scope of work necessary today to properly complete the assignment, they would be forced to charge the lender for their services instead of riding on the back of the

appraiser. An AMC owned by the lender would only be paying itself for these services. The fees would still be passed on to the consumer and they likely wouldn't break even due to labor and material costs. Their solution, force the appraiser to absorb the cost via a reduced fee and we (AMC's) win. We charge the borrower \$450-\$600, pay the appraiser somewhere in the range of 50-60% (if we're lucky) and pocket the rest. The ongoing argument of appraisal fees needs additional serious consideration. HVCC and the shortcomings of H.R. 4173 have done enough damage already. Making additional hasty decisions based on poor or tainted data and ignoring the minority position of the Appraiser will not accomplish the goal of "restoring the public trust" or providing transparency. Past and current fees have lagged well behind other professions and inflation due to lenders constant threat of obtaining the product for less from someone else, usually someone less qualified or incompetent. Free market principles are not working, because of the actions and pressures from creditors and AMC's. It would seem they have cornered the market. Fees or wages for other professional services and occupations have increased at no less than the rate of inflation. The only item I can find with a cost near the same today as it was in 1991 is a gallon of milk. This is likely due to the government subsidy of farmers. I know for sure gasoline costs 153% more, my health insurance costs 300% more, my E<sup>o</sup>insurance premiums have increased 73% due to the "requirements" of most lenders and AMC's, 25% without AMC mandated increased limits of liability (over past 12-years), multiple listing services have increased 45%, my CPA costs 70% more (increase over past 10-years and he's reasonable), an average new car costs 59% more, paper has increased 62%, ink and toner at least 100% more, an average funeral costs 135% more, food costs more, everything costs more, but the Appraisers wages have not kept pace with inflation or other professions that require specific education, licensure, continuing education and the degree of liability an Appraiser bears. Prior to the implementation of HVCC and the increased requirements of Fannie Mae and Freddie Mac, I could complete an appraisal from start to finish including drive time and fieldwork in about 5-hours (metropolitan Detroit area). I earned \$50.00/hour gross, a reasonable fee. Today a non-complex single-family URAR should cost \$250.00 + 61.09% inflation from 1991 to October 2010 = \$403.23 for a non-complex URAR single-family report. All things being equal that would be \$80.65/hr gross. But all things are not equal, during this period the 1004MC has arrived and requires an additional 1-2 hours on each report to complete and today an appraiser needs to also include no less than 2 active listings or pending sales in addition to the traditional 3 comparable sales, an additional 1-2 hours for research, field work and reporting. This same report should now cost a minimum of \$564.53 allowing for inflation, the additional required work, and increases in ancillary costs. ( $403.23 + 2\text{-hours} @ 80.65/\text{hr} = \$564.53$ ) Allowances would also be necessary to those assignments that were in markets with higher costs of living, rural areas, or areas where mls data is limited or non-existent requiring a greater investment of time on the part of the Appraiser to obtain the necessary data to complete the report. Lenders / AMC's have simply refused to pay a reasonable fee reflective of the increased costs and additional work necessary to meet these guidelines. To complete an appraisal it now takes in the range of 6-10 hours with 7-8 hours the new normal. If I'm lucky, I can get \$275.00 for my efforts from an AMC. This equates to an inflation adjusted pay cut of -51.29%. Not considering the additional fees charged to the Appraiser. Firewalls charge 10% - 25% of the appraisal fee, Appraisalport wants \$10.00 for delivery, Provalusa.com charges \$75.00 for acceptance and delivery of the assignment, and the Mercury Network charges \$13.75 if

the client accepts my fee or no cost to me if I accept the clients fee, usually 25-30% less than my "customary and reasonable" fee. To make a semantic argument about customary and reasonable fees is ridiculous. Paying any less than \$564.53 is at a minimum reasonable. As for Customary, this term should be taken with a grain of salt as lenders and AMC's have continually brow beat Appraisers into lower fees interfering with free market principles. Is it fair to use customary when customary has been anything but fair? No fees should be charged as a percentage of the appraisal fee. Why should an AMC or other platform make more money simply because the Appraiser does? They have not provided any additional work or service to the client and certainly have not been subjected to any increased liability or expense. AMC's have no financial risk or liability for the report so why should they benefit as if they do? One particular "firewall" since its inception has increased its transaction fee to the Appraiser from 3% to 6% to a current 10% of the appraisal fee, a 333% increase in less than 1-year. These "firewalls" and AMC's have been issued a governmental license to steal by the HVCC and H.R. 4173. Appraisers have never been able to charge based on the value of a property, for obvious reasons, although others involved in a mortgage transaction receive compensation based on percentages of the loan amount, the sale price, title insurance, yield spread premiums, etc. You should have heard the gasp when I raised my fees when gasoline was above \$3.00/gallon with no end in sight. Is it any wonder why many long time appraisers have given up the ship? Analysis of appraisal fees by third parties should be considered tainted as they are still compiled from fee data that has been suppressed by lenders/creditors. Free market principles are not functioning due to the manipulation of AMC's and creditors. No one wants to be the first to fall on the sword. An increase in fees results in less work, removal from approved lists or panels and only serves as an example to the rest of the sheep the consequences of being "independent". Many have suggested the use of the VA fee schedule as a guide or starting point. The VA fee schedule could be considered the minimum starting point as these fees were also likely unintentionally based on previous tainted and suppressed fee data. COD terms also need to be restored. I have no concern for the confusion created over report "ownership" that may result to the consumer in relation to who paid for the report. The creditor can easily clarify any confusion regarding the "ownership" of an appraisal with proper disclosure at the time of loan application or by the Appraiser at the time of inspection. When I could collect COD, I could do business with Clients thousands of miles away with confidence. Now, under HVCC and H.R. 4173 I'm again a hostage. The questionable AMC or Lender on the other side of the Country has no incentive to pay me anything and can do so with limited reprisal. An AMC out of California that I dealt with earlier this year (the first order) has yet to pay for the appraisal, despite numerous requests via phone and e-mail. The cost of travel and attorneys fees to collect from that dead-beat is greater than the loss. I don't know what the limits or regulations in other states are, but here in Michigan, attorneys can't participate in small claims matters, which the fee definitely falls within the limits of small claims, requires a change in venue to circuit or district courts to have legal representation. With COD the consumer knew what the appraisal fee was, because they paid it at the door. Maybe, investigation and discussion is warranted on the practice of enticing consumers with "free" appraisals and credit reports? Its easy to give away something for free when you know in advance that you will not pay a reasonable price for the service or pay at all. As with all businesses, goods and services that are consumed and not paid for will only result in higher prices to all to cover the increased risk in doing business with AMC's. I will for a moment be so arrogant to assume that I can speak on behalf of all Appraisers in regard to

appraisal fees. Most of us are well aware of the misdeeds of the recent past and present financial giants. Recent press releases from the Department of Justice (DOJ) and other news outlets provide ample evidence and exposure as to the willingness of financial institutions to lie, cheat and steal for their own interests in multiple arenas. AMC's owned and/or operated by financial institutions or other "independent" organizations are most assuredly trying to manipulate or control the fee structure for unearned financial benefit. Are Appraisers' supposed to believe these corporations and executives are and have been acting with the best interests of the Appraiser and public in mind? It is certainly clear they have not, and we urge you to act independently and without bias in this matter. Input from any of these institutions, organizations, their attorneys, lobbyists, trade organizations, or other representatives should not be considered in the decision of determining what defines customary and reasonable fees. It is clear that hundreds of millions of dollars are at stake, otherwise, there would be little or no resistance by AMC's and creditors as to what the fee for an appraisal is. They've had a great racket going and are obviously willing to protect it at any cost. The Appraisal Profession needs to ultimately determine what fees are reasonable for any given assignment, as we are the only ones with the experience and expertise necessary to provide this solution. Removing all influence from the Appraiser and the appraisal process is what will provide Appraiser and Appraisal Independence and allow free market principles and competition to return to this profession and restore the public trust. A wise and frugal government, which shall leave men free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it, has earned - this is the sum of good government. Thomas Jefferson All, too, will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; that the minority possess their equal rights, which equal law must protect, and to violate would be oppression. Thomas Jefferson Respectfully Submitted Bradley A. Strange Michigan Certified Residential Appraiser President - BGS Appraisal Services