NATIONAL ASSOCIATION OF REALTORS®

The Voice For Real Estate®

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October 14, 2010

Kathleen Ryan
Senior Counsel
Division of Consumer and Regulatory Affairs
Federal Reserve Board
Washington, DC 20551

Dear Ms. Ryan:

I am writing on behalf of the 1.1 million members of the National Association of REALTORS® (NAR) to provide written comments on the Federal Reserve Board's implementation of the appraisal provisions of Public Law 111-203, the Dodd-Frank Wall Street Reform and Consumer Protection Act (HR 4173). This letter is a follow up to the September 8, 2010, conference call outlining our views on the drafting of regulations pertaining to this legislation.

The National Association of REALTORS® is America's largest trade association, including NAR's five commercial real estate institutes and its societies and councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,400 local associations or boards, and 54 state and territory associations of REALTORS®. NAR has approximately 30,000 appraiser members from across the country and approximately 750 have earned our Residential Accredited Appraiser (RAA) and General Accredited Appraiser (GAA) designations.

Title XIV of HR 4173, which creates federal appraisal independence standards within the Truth in Lending Act (TILA) and amends appraisal requirements contained in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, contains similar language found in the Home Valuation Code of Conduct (HVCC). While the legislation sunsets HVCC, the government sponsored enterprises (GSEs), Fannie Mae and Freddie Mac, have stated that the objectives of the Code will remain in their guides. There are several lessons for the implementation of Title XIV that can be learned from the implementation of the HVCC. Misinformation about issues such as appraisal portability and communication with the appraiser led to great confusion in the industry about permitted versus prohibited practices. NAR recommends that upon the unveiling of the appraiser independence regulations that the Federal Reserve make substantial efforts to work with the industry in distributing accurate information to the appropriate stakeholders.

Appraisal Portability

While HVCC worked to strengthen appraiser independence its implementation effectively ended the practice of appraisal portability. HR 4173 states that regulations pertaining to appraisal portability

may be issued. NAR recommends the issuance of such regulations. The Federal Housing Administration appropriately addresses the issue of appraisal portability in Mortgagee Letter 2009-29. The Mortgagee Letter expressly prohibits "appraisal shopping" and establishes appropriate circumstances for portability. Any appraisal portability regulation must also consider liability issues for the appraiser and be in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP).

Communicating with the Appraiser
While the GSEs, along with the Federal Housing Finance Agency (FHFA) and industry stakeholders, have worked to address the issue of communication with the appraiser, misinformation continues to persist in the marketplace. NAR supports the exception language found in the new Section 129(E)c, which outlines three circumstances where communication with the appraiser is appropriate. Communication is a critical component in determining the value of real property and the exception language in this section protects communication without causing harm to appraiser independence.

Definition of Appraisal Management Company (AMC)
The Federal Reserve should provide a definition of an "appraisal management company" (AMC). HR 4173 does establish parameters of an AMC as a "third party authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than 15 certified or licensed appraisers in a state or 25 or more nationally within a given year." We believe the Federal Reserve should make a distinction between AMCs and appraisal firms that employ appraisers as W-2 employees. These firms have an employer-employee relationship and should not be viewed as maintaining an appraisal roster or panel.

Definition of Appraiser
HR 4173 does not define the terms "appraiser" or "appraisal" but the Federal Reserve did ask how NAR and the other stakeholders would define the terms for the new section 129 of TILA. Generally, NAR supports the broad definition of these terms found in Homeownership and Equity Protection Act (HOEPA) and the Equal Credit Opportunity Act (ECOA). ECOA defines an "appraisal report" to include evaluations and valuation methods used, including broker price opinions (BPOs), and NAR supports this language when BPOs are used in extending credit for a consumer credit transaction secured by the principal dwelling of the consumer. However, a BPO should not be considered an "appraisal report" when the BPO is used for listing and selling purposes.

Prohibited Acts
Language that describes violations of appraiser independence should not be considered exhaustive. Paragraphs 1-4 of Section 1472(b) recognizes "acts or practices that violate appraisal independence." NAR does not believe that the intent was to provide an exhaustive list of prohibited practices. The Federal Reserve should consider additional acts or practices that may reasonably impede appraisal independence.

NAR recommends that the Federal Reserve Board carefully define the term "instructs". The new Section 129 of TILA states that an act or practice that violates appraiser independence includes an appraisal in which "a person with interest in the underlying *transaction compensates, coerces, extorts, colludes, instructs, induces, bribes, or intimidates*" a person involved with the appraisal. While most of the

prohibited acts are straight forward, the term "instructs" should be carefully defined. The term instructs can be positive when providing guidance, particularly for complex assignments. However, the term can also be negative, for example, if an appraiser is instructed to find a specific value in real property.

Prohibitions on Conflict of Interest
The new Section 129E(d) prohibits appraisers and appraisal management companies from having a direct or indirect interest in the transaction involving the appraisal. NAR believes this provision should not apply only to institutions of a particular size. While HVCC will expire with the implementation of the appraisal independence regulations, the Code exempts small banks from its conflict of interest provisions. HR 4173 already exempts bank-owned AMCs from state registration. Treating institutions differently based solely on size creates confusion in the market place, which may result in delayed transactions of less liquidity available for consumers.

Consideration of Professional Appraisal Designations
HR 4173 amends Section 1122(d) of FIRREA with respect to professional appraisal designations to state that "[m]embership in a nationally recognized professional appraisal organization may be criteria considered" for an assignment. For the purposes of this section, the National Association of REALTORS® should be considered a "nationally recognized professional appraisal organization". As we mentioned above, we have approximately 30,000 appraiser members from across the country and approximately 750 have earned our Residential Accredited Appraiser (RAA) and General Accredited Appraiser (GAA) designations. Appraiser members of NAR who have earned these designations worked as hard as they might for designations earned with other professional appraisal organizations.

Thank you for your time and consideration of this matter. If you have any questions or concerns, or if we may be of service to you, please do not hesitate to contact us or our NAR's Senior Regulatory Policy Representative, Jerry Nagy, at 202.383.1233 or jnagy@realtors.org.

Sincerely,

Vicki Cox Golder

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2010 President
National Association of REALTORS®