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December 27, 2010

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

Re: Docket No. R-1394, RIN AD-7100-56 Truth in Lending Interim Final
Rule

Dear Ms. Johnson:

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 interim final rule amending Regulation Z (Truth in Lending) and implementing Section 129E of the Truth in Lending Act (TILA) as required under the provisions of Public Law 111-203, the Dodd-Frank Wall Street Reform and Consumer Protection Act (HR 4173).

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.

According to the summary of the interim final rule, the rule applies to "creditors, appraisal management companies, appraisers, mortgage brokers, realtors, title insurers and other firms that provide settlement services." The term "realtor" is used in other areas of the rule as well. The use of this term implies that only licensed real estate agents who are members of the National Association of REALTORS® are impacted by this rule. Only members of NAR may use the term REALTOR®. Because not all licensed real estate agents and professionals are members of NAR, the term "Realtors®" should be replaced by the term "licensed real estate brokers or agents" or "licensed real estate professionals".

Membership or Lack of Membership in Appraisal Organization

The Board requests comment on whether the final rule should prohibit basing an appraiser's compensation on membership in an appraisal organization. NAR recommends that the Board prohibit basing an appraiser's compensation conditioned on membership in any organization. However, the Board should consider allowing a qualifying factor for compensation to include obtaining professional appraisal designations. These designations indicate a level of expertise and often require rigorous standards be adhered to.



REALTOR® is a registered collective membership mark which may be used only by real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and subscribe to its strict Code of Ethics.

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 should receive the same treatment as those who have earned designations from other professional appraisal organizations.

Definition of Valuation

The Board solicits comments on the exclusion of automated valuation models (AVMs) in the definition of the term “valuation”. NAR has supported the ECOA definition of “appraisal report” to include evaluations and valuation methods used, including broker price opinions (BPOs) when BPOs are used in extending credit for a consumer credit transaction secured by the principal dwelling of the consumer. While this is a broad view of “appraisal report”, NAR believes it is defined appropriately and provides greater protection for the consumer. Similarly, NAR recommends casting a broad net in defining valuation, including AVMs, for the final rule. This will ensure that the rule protects various valuation methods and applies broadly to acts or practices that compromise the independent estimation of value in the consumer’s principal dwelling.

Reporting Requirement

NAR believes that the reporting requirement should be applied regardless of impact on the assigned value. The Board solicits comments on whether reporting should be required only if a material failure to comply causes the value to differ from the value that would have been assigned had a material failure not occurred. The assigned value of the dwelling should not be the sole criterion for determining a quality appraisal report. A failure to comply with Uniform Standards of Professional Appraisal Practice (USPAP) or with an ethical or professional requirement under applicable law or regulation may be completely unique to assigning an appropriate value to the consumer’s principal dwelling unit.

Coercing developers of AVMs

Including AVMs in the definition of value makes it reasonable to prohibit creditors or other persons to exercise or attempt to exercise improper influence over persons that develop AVMs used for estimating the value of a consumer’s principal dwelling. Some appraisal management companies (AMCs) have AVMs as part of their business model. AVMs, per USPAP, must be understood by the user and must be able to produce credible results. Excluding developers and users of AVMs may provide a loophole for some covered persons to attempt to improperly influence the developer of an AVM.

Exempting Settlement Service Providers

NAR believes that providers of “settlement services” as defined under the Real Estate Settlement Procedures Act (RESPA) is the appropriate definition of covered persons who are subject to the prohibition on coercion and similar practices under the new TILA requirements. Exempting some settlement service providers and not others may cause confusion in the industry. There may be an unintended consequence of having some industry stakeholders rely on settlement service providers where coercion is not prohibited.

Providing Multiple Settlement Services

The Board requests comment on possible conflicts of interest for persons preparing valuations in addition to performing other settlement services. NAR understands that some companies are structured such that they offer an array of settlement services, which may result in greater

efficiencies and savings to the borrower. However, NAR has concerns about individuals providing valuation services, such as preparing an appraisal report, and providing additional settlement services on the same transaction. For example, if an individual is preparing an appraisal and also provides a settlement service that is compensated based on a condition that the transaction takes place, there could be a conflict of interest and it may be a violation of USPAP. NAR recommends that individuals be prohibited from providing additional settlement services if the individual is also preparing a valuation service.

Definition of Appraisal Management Company (AMC)

According to FIRREA, the definition of an AMC is limited to entities that oversee a network or panel of more than 15 certified or licensed appraisers in a state or 25 or more nationally. The Board requests comment on limiting the meaning of AMC to entities with an appraisal panel of a particular size. NAR believes that the number of members on an appraisal panel should not define an AMC. Generally, the number of appraisers on a panel for the purposes of defining an AMC is arbitrary. The distinction should be between appraisal firms that employ appraisers as W-2 employees and AMCs that typically employ appraisers on a contract basis.

Treatment of Surveys and Studies

NAR does not have a policy position on customary and reasonable compensation paid to fee appraisers. The Board requests comment on various aspects of reasonable and customary fees, including the use of surveys or studies as a presumption of compliance. NAR believes surveys and studies should be treated the same. Treating surveys and studies differently may create the unintended consequence of methodology reducing the accuracy of appraiser fees. The market alone should be the driver of fees paid to appraisers and the method of collecting and analyzing this data should not impact the results of any study or survey.

Disclosure of Fees

While NAR does not have a policy position on reasonable and customary fees we do support greater disclosure of fees to the consumer. In Mortgagee Letter 2009-28, the US Department of Housing and Urban Development (HUD) permits report to include the fee paid to the appraiser. Consumers typically receive a copy of the appraisal report. If the mortgage will be insured by the Federal Housing Administration the consumer will be able to compare the fee paid to the appraiser against the appraisal services fee listed on the HUD-1. NAR recommends that the Federal Reserve consider adopting similar rules for transactions involving a consumer's principal dwelling where an appraisal is required.

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 NAR's Senior Regulatory Policy Representative, Jerry Nagy, at 202.383.1233 or jnagy@realtors.org.

Sincerely,



Ron Phipps, ABR, CRS, GRI, GREEN, e-PRO
2011 President, National Association of REALTORS®