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June 30, 2015

TO: Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552

FR: National Association of Appraisers

RE: Docket No. CFPB-2015- 0029, RIN 3170-AA48; Delay of implementation of TILA-RESPA Integrated Disclosures Rule and request for clarification/interpretation

Dear Ms. Jackson:

The National Association of Appraisers applauds the Consumer Financial Protection Bureau's integration of the TILA and RESPA mortgage loan disclosures to consumers and we support the Bureau's delay of implementation until October 3rd, 2015. We sincerely appreciated the opportunity to provide our input regarding the rule however; as preparations have been made for implementation some practical issues and concerns have been raised by many of us in the valuation community that were not apparent at the time the rule was adopted. We would like to bring these concerns to your attention, request clarification and offer what we believe is a simple solution.

Our primary concern is with the interpretation by some that the discovery of additional appraisal complexities after the issuance of a Loan Estimate would not constitute a "changed circumstance" and appraisal fees therefore cannot be redisclosed. This interpretation has unintended consequences to many including consumers, creditors, appraisal management companies (AMCs), originators and appraisers.

TILA and HUD both recognize that customary and reasonable appraisal fees vary with the complexity of the appraisal assignment. Under TILA Section 129E, a creditor and its agent must pay a fee appraiser at a rate that is reasonable and customary in the geographic market where the property is located. In addition, the statute provides that if an appraisal involves a "complex assignment," the customary and reasonable fee may reflect, *"the increased time, difficulty, and scope of the work required for such an appraisal and include an amount over and above the customary and reasonable fee for non-complex assignments."*

The "customary and reasonable" compensation provision that Congress adopted as part of TILA is identical to a requirement included in a HUD Mortgagee Letter obligating FHA lenders to ensure that appraisers are paid *"at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised."* HUD's statements regarding this provision recognize the role of the marketplace in determining rates for appraisal services and the importance of accounting for factors that can cause variations in what is a customary and reasonable amount of compensation **on a transaction-by-transaction basis.**

Similarly, TILA Section 129E(i) focuses on the marketplace by permitting use of objective market information to determine rates. The statute also makes allowances for factors that the marketplace acknowledges add to the

complexity of an appraisal and thus value of appraisal services in a given transaction, such as “increased time, difficulty, and scope of work.”

Unlike many fees in the “zero-tolerance” category, originators often do not have enough information about the complexities of a subject property to quote appraisal fees accurately at the time of application; nor are originators qualified to determine the scope of work necessary for an appraiser to arrive at credible assignment results. While it would be ideal, it is simply not practicable for creditors, AMCs or appraisers to develop fee schedules including the variety of complexities which may cause customary and reasonable fees to change, particularly because complexities and scope of work often can only be determined by the appraiser and often cannot be determined until after the appraisal process has begun.

Brad Armbrust, renowned appraiser educator and Appraiser Qualifications Board Certified instructor in the Uniform Standards of Professional Appraisal Practice writes in his Residential Case Studies course: *The appraisal process begins with the definition of the problem and subsequent identification of the real estate. Seldom does the appraiser realize the complexity of the appraisal problem until the physical inspection of the real estate [has been made.] It is at this time that the unique features of a property become apparent.... Ultimately, the availability of data, or lack of data, will determine the complexity of the problem.* There are innumerable property characteristics discovered during the appraisal process that may cause the fee to increase. A brief list of some of the more common complexities include:

- Functional obsolescence
- Significant remodeling/refurbishment
- Physical deterioration
- Locational and economic external obsolescence
- Non-conforming land uses
- Unpermitted/illegal additions
- Excess and surplus land

HUD’s Frequently Asked Questions – Reasonable Fees/Time document states: *“Given that a reasonable and customary fee depends on the complexity of the assignment and the expertise needed to perform and report a credible and accurate appraisal of the property, the fee will vary depending on the property type, the purpose of the assignment and the scope of work and, therefore, cannot be easily defined as an objective number.”*

As you can see, not allowing discovery of additional appraisal complexities to be considered a “changed circumstance” has the unintended consequence of placing creditors and AMCs in the untenable position of either 1) complying with TRID 2) violating the customary and reasonable fees provision of Section 129E of the Truth in Lending Act or 3) absorbing the increases in appraisal fees attributable to more complex appraisal assignments. Should these parties choose the latter; the most likely result will be increased loan origination and appraisal management fees to *all* consumers.

Practically speaking, we fear the most likely result will be that pressure will be placed on appraisers to charge a flat fee for complex and non-complex appraisals. This has unintended consequences to consumers and, in fact, will likely impact lower income consumers and consumers in rural areas disproportionately. If appraisers are required to develop fee schedules regardless of complexity, they will have no choice but to increase fees for *all* assignments to compensate for losses on *complex* assignments. It seems inequitable that a consumer financing a non-complex residence (often those of more moderate means) would subsidize those financing complex properties.

Another potential consequence adverse to consumers could occur if qualified appraisers simply decline or withdraw from complex assignments for which they will not be reasonably compensated. This would cause significant (and potentially costly) delays in the mortgage lending process. Again, from a practical perspective, this may also result in complex assignments being placed with appraisers who are less qualified to perform them thereby negatively impacting consumers, creditors, secondary market participants, etc.

In conclusion and as a simple solution, the National Association of Appraisers is requesting an interpretation of a "changed circumstance" to include additional appraisal complexities discovered after the issuance of a Loan Estimate.

Thank you for your consideration. Should there be any questions regarding our comments and concerns, please contact Laurie Egan at (800) 766-1936 or president@naappraisers.org

Sincerely,

A handwritten signature in black ink, appearing to read "Laurie Egan".

Laurie E. Egan, MNAA
President, National Association of Appraisers