October 9, 2012

Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Integrated Mortgage Disclosures under Real Estate Settlement Procedures Act (Reg X) and Truth In Lending Act (Reg Z), Docket ID - CFPB-2012-0028, **RIN 3170-AA19**

To Whom It May Concern:

On behalf of the more than 25,000 members of our respective organizations of professional real estate appraisers, please accept these comments in relation to the Integrated Mortgage Disclosures and proposed Closing Disclosure Form under the Real Estate Settlement Procedures Act and Truth in Lending Act.

We have reviewed the full weight of the proposed rule and its impacts on consumers and real estate appraisers, and we have some concerns. First, the proposal fails to require disclosure of appraisal management company (AMC) fees to consumers, separate and apart from fees paid by consumers for the appraisal services of professional real estate appraisers, as authorized by the Dodd-Frank Wall Street Reform and Consumer Protection Act (hereinafter, the "Dodd-Frank Act"). Instead, the Consumer Financial Protection Bureau (CFPB) apparently has elected to "take a pass" on this issue by making it optional, but not required, for the appraisal fee to be listed separate and apart from any fee paid to an AMC for its services in the transactions. This is especially disappointing given the clear authorization contained in the Dodd-Frank Act. Second, no justification has been provided by the agency regarding an explanation to consumers as to why they would be harmed by, or would not benefit from, disclosure. We strongly encourage the CFPB to reconsider this position, and to require the disclosure of AMC fees, separate and apart from appraisal fees, when AMCs are used. This modification would be consistent with the authorization contained in the Dodd-Frank Act that permits the CFPB to make this separation a requirement.

AMC Fee Disclosure

We are deeply disappointed that the CFPB has failed to address an important consumer protection issue, namely, the disclosure of AMC fees to consumers, separate and apart from appraisal fees. Under the proposed rule and draft Consumer Disclosure form, the CFPB has proposed to make disclosure of AMC fees to consumers optional, rather than required.

We believe that the CFPB has misinterpreted the Dodd-Frank Act. As you know, Section 1475 of the Dodd-Frank Act states:

> *`(c) The standard form described in subsection (a) may include, in the case of an appraisal coordinated by an appraisal management company (as such term is defined in section 1121(11) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(11))), a clear disclosure of--*
>
> *`(1) the fee paid directly to the appraiser by such company; and*
>
> *`(2) the administration fee charged by such company.'.*

We interpret this provision as authorizing the CFPB to make a decision one way or the other as to whether or not to disclose the AMC fee to the consumer when an AMC is used. The CFPB has ignored two seemingly simple options presented by Congress – to disclose AMC fees or not to disclose AMC fees. Instead, the CFPB has unilaterally established a third option – making disclosure optional, contrary to the language of the Dodd-Frank Act.

Legislative History

In fact, the issue of whether consumers would benefit from this information was central to the legislative history of Section 1475. Originally, this provision, as passed by the House of Representatives on May 7, 2009, mandated "clear disclosure" of the AMC fee separate and apart from the appraiser's fee. Section 606 of H.R. 1728 stated that:

> Section 4 of the Real Estate Settlement Procedures Act of 1974 is amended by adding at the end the following new subsection:
> `(c) The standard form described in subsection (a) ***shall*** {emphasis added) include, in the case of an appraisal coordinated by an appraisal management company (as such term is defined in section 1121(11) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(11))), a clear disclosure of--
> `(1) the fee paid directly to the appraiser by such company; and
> `(2) the administration fee charged by such company.'.

However, during the Conference Committee that resulted in the passage of the Dodd-Frank Act in 2010, members of the Senate Committee on Banking requested that the "shall" be changed to a "may." The concerns of the Senate Committee on Banking centered on whether additional line items may unintentionally confuse consumers by providing too much information or potentially raising additional consumer questions. As a result, the question of whether to disclose the AMC fee to consumers was left for the CFPB to decide. It is important to note a consequence of the legislative language change was the allowance of non-disclosure of fee, a violation of RESPA.

Important Consumer Disclosures Should Not be Left to Those with Vested Interests

We do not believe that the decision to hide or disclose the AMC fee should be left to the discretion of a party that may have a vested interest in hiding this fee from consumers. As we understand the settlement process, lenders provide instructions to settlement agents relating to the fees to disclose. Under the proposed rule, lenders that prefer to disclose the AMC fee to the consumer could instruct the settlement agent to include a line item for the AMC fee and whatever amount was charged for that service. Conversely, lenders that do not want to report the fee paid to the AMC could instruct the settlement agent to bundle the two fees under the Appraisal fees.

This is likely to result in inconsistency in the disclosure of AMC fees, with some lenders listing only an appraisal fee and others listing both an appraisal and an AMC fee without any explanation. We believe that this will confuse consumers, not empower them to make rational and responsible decisions.

Further, we believe that the proposed rule may result in an unintended consequence – hastening the development of bank-owned or "captive" AMCs. A separate provision of the Dodd-Frank Act (known as the Klobuchar-Merkley Amendment) places a cap on the points and fees that may be charged by a lender at 3 percent of the loan amount. AMC fees that are listed separately on the consumer disclosure forms would be considered as part of the 3 percent points and fees cap. On the other hand, captive AMC fees would fall outside of this points-and-fees cap if the AMC fee is bundled with the appraisal fee, under current interpretations of REPSA carried forward in the proposed rule. We see this allowance as a loophole that exposes consumers to additional bank fees in direct conflict with the spirit of the Klobuchar-Merkley Amendment.

Consumer Research

We understand that the CFPB conducted several consumer focus groups relating to the AMC fee disclosure issue. This included at least one round of focus groups with a draft Consumer Disclosure Form that contained separate line items for the AMC and appraisal fees. However, none of the results from that consumer research were reported in the consumer feedback report that accompanied the proposed rule. This is unfortunate, because this information is critical to understanding whether consumers would benefit from, or be confused by, a separate line item disclosing AMC fees – the central question asked of the CFPB by the Dodd-Frank Act.

It is abundantly clear that the intent of Congress was for the CFPB to conduct consumer research regarding the separation of the AMC fee from the appraisal fee, and if the research indicated that consumers would benefit from, or suffer no harm from, the separation of the fees, that the CFPB was to require their separation as part of the Consumer Disclosure Forms.

This is equally disappointing in the sense that there are other options for reporting AMC fees. As the AMC service is one of an administrative processing function from which only the lender obtains a benefit, we believe it should actually be listed under the "Origination Fees" section of the Closing Disclosure form. In fact, we believe that this option would likely address any consumer confusion that may have been expressed during the CFPB consumer research (assuming there was any).

Moving forward, we call on the CFPB to release the consumer research that it conducted on the AMC fee issue to allow parties to review and comment on the merits of consumer disclosure of AMC fees separate and apart from appraisal fees.

State Laws Requiring Separation & Disclosure of AMC Fees

Lastly, we believe that a federal requirement for the separation of the AMC from the appraisal fee would be consistent with the requirements enacted by several states as part of their comprehensive AMC registration and oversight laws (also required by the Dodd-Frank Act). While state law cannot dictate the contents of the consumer disclosure forms, several states have enacted requirements of their own that require the separation of the appraisal fee from the appraisal management fee as part of another document that is provided to consumers at the closing of the transaction.

For instance, section § 47-14-18 of the New Mexico statutes states that:

> *"B. An appraisal management company shall separately state the fees paid to an appraiser for appraisal services and the fees charged by the appraisal management company for services associated with the management of the appraisal process, including procurement of the appraiser's services to the client, borrower and any other payor."*

Section 458/10-10 of the Illinois statutes states that:

> "*When an appraisal obtained through an appraisal management company is used for loan purposes, the borrower or loan applicant shall be provided with a written disclosure of the total compensation to the appraiser or appraisal firm within the certification of the appraisal report and it shall not be redacted or otherwise obscured."*

And, section § 20-529a of the Connecticut General Statutes states that:

> *(c) Each appraisal management company shall disclose to a client prior to providing, or along with, the appraisal report (1) the dollar amount of the total compensation to be paid by such company to the*

> *appraiser who performed the appraisal; and (2) the dollar amount of the total compensation to be retained by such company from the appraisal fee paid to such company for such appraisal.*

The intent of the Connecticut, Illinois and New Mexico laws is to disclose to the consumer the portion of the total fee that they paid for appraisal services that actually was paid to the appraiser, and the portion that was retained by the AMC as an appraisal management fee. Laws similar to those of Connecticut, Illinois and New Mexico also are in effect in no fewer than seven (7) additional states.

The CFPB should follow the lead of those states that have enacted requirements for the disclosure of the AMC fee separately and apart from the appraisal fee.

Summary

The CFPB must resolve this matter once and for all – it should not establish rules that create more questions than answers or options that limit comparability amongst different mortgage products. The agency should establish clear and understandable rules that consumers, financial institutions and our profession may rely on when commencing with mortgage financing transactions. Specifically, the CFPB should require the disclosure of AMC fees separate and apart from the fees paid to a professional appraiser for appraisal services when AMCs are used by banks and financial institutions.

We look forward to reviewing the full proposed rule and advising you of any additional comments and/or suggestions. Please contact Bill Garber, Director of Government and External Relations, at 202-298-5586, bgarber@appraisalinstitute.org, or Brian Rodgers, Manager of Federal Affairs, at 202-298-5597, brodgers@appraisalinstitute.org, if you have any questions or would like additional information.

Sincerely,

Appraisal Institute
American Society of Farm Managers and Rural Appraisers