

CUSTOMARY and REASONABLE Appraisal Fees

Pg 1 of 4

Per the Dodd-Frank Law, Federal Reserve Board Interim Final Rule, and the FDIC 'Final' AMC Rule (subject to approval of 6 'Agencies'), Effective Date not yet determined (60 days after publication date in the Federal Register) available at:

https://www.fdic.gov/news/board/2015/2015-04-21_notice_sum_d_fr.pdf

Pages 1-75 have explanations and decisions; Pgs 76-128 is the Regulation

Dodd-Frank Law:

“(i) CUSTOMARY AND REASONABLE FEE.—

“(1) IN GENERAL.—Lenders and their agents shall compensate fee appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised. Evidence for such fees may be established by objective third-party information, such as government agency fee schedules, academic studies, and independent private sector surveys. **Fee studies shall exclude assignments ordered by known appraisal management companies.**

Federal Reserve Board IFR:

Customary and reasonable rate of compensation for fee appraisers.

Under the interim final rule, 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.

The rule provides **two presumptions of compliance.**

Under the first, a creditor and its agent is presumed to have paid a customary and reasonable fee if the fee is reasonably related to recent rates paid for appraisal services in the relevant geographic market, and, in setting the fee, the creditor or its agent has:

- a- Taken into account specific factors, which include, for example, the type of property and the scope of work; and
- b- Not engaged in any anticompetitive actions, in violation of state or federal law, that affect the appraisal fee, such as price-fixing or restricting others from entering the market.

Second, a creditor or its agent would also be presumed to comply if it establishes a fee by relying on rates established by third party information, such as the appraisal fee schedule issued by the Veteran's Administration, and/or fee surveys and reports that are performed by an independent third party (**the Act provides that these surveys and reports must not include fees paid by AMCs**).

SEE NEXT PAGE FOR FDIC AMC REGULATION 'FINAL RULE'

FDIC 'Final' AMC Rule (subject to approval of 6 'Agencies')

There is **NO direct mention** of C&R fees within the document. However, on page 5, the document has this information:

Pursuant to FIRREA section 1124, the Agencies must establish, by rule, minimum requirements to be imposed by a participating State appraiser certifying and licensing agency on AMCs doing business in the State⁽⁸⁾

Specifically, pursuant to section 1124(a), participating States must require that AMCs: (1) register with, and be subject to supervision by, the State appraiser certifying and licensing agency in the State or States in which the company operates; (2) verify that only State-certified or State-licensed appraisers are used for Federally related transactions;⁽⁹⁾

(3) require that appraisals comply with the Uniform Standards of Professional Appraisal Practice (USPAP); and

(4) require that appraisals are conducted in accordance with the statutory valuation independence standards pursuant to the Truth in Lending Act (TILA) (15 U.S.C. 1639e) and its implementing regulations.⁽¹⁰⁾

⁽¹⁰⁾ is this: 12 U.S.C. 3353(a). For regulations implementing TILA section 129E, 15 U.S.C. 1639e, see 12 CFR 226.42 (Board) and 12 CFR 1026.42 (Bureau).

12 CFR 226.42 has this:

(f) *Customary and reasonable compensation*—

(1) **Requirement to provide customary and reasonable compensation to fee appraisers.** In any covered transaction, the creditor and its agents shall compensate a fee appraiser for performing appraisal services at a **rate that is customary and reasonable for comparable appraisal services performed in the geographic market** of the property being appraised. For purposes of paragraph (f) of this section, “agents” of the creditor do not include any fee appraiser as defined in paragraph (f)(4)(i) of this section.

(2) **Presumption of compliance.** A creditor and its agents shall be presumed to comply with paragraph (f)(1) if—

SEE NEXT PAGE FOR FDIC AMC REGULATION 'FINAL RULE' (Con't)

(i) The creditor or its agents compensate the fee appraiser in an amount that is **reasonably related to recent rates paid for comparable appraisal services performed in the geographic market** of the property being appraised. In determining this amount, a creditor or its agents shall review the factors below and make any adjustments to recent rates paid in the relevant geographic market necessary to ensure that the amount of compensation is reasonable:

- (A) The type of property,
- (B) The scope of work,
- (C) The time in which the appraisal services are required to be performed,
- (D) Fee appraiser qualifications,
- (E) Fee appraiser experience and professional record, and
- (F) Fee appraiser work quality; and

(ii) The creditor and its agents do not engage in any anticompetitive acts in violation of state or federal law that affect the compensation paid to fee appraisers, including—

(A) Entering into any contracts or engaging in any conspiracies to restrain trade through methods such as price fixing or market allocation, as prohibited under section 1 of the Sherman Antitrust Act, 15 U.S.C. 1, or any other relevant antitrust laws; or

(B) Engaging in any acts of monopolization such as restricting any person from entering the relevant geographic market or causing any person to leave the relevant geographic market, as prohibited under section 2 of the Sherman Antitrust Act, 15 U.S.C. 2, or any other relevant antitrust laws.

(3) ***Alternative presumption of compliance.*** A creditor and its agents shall be presumed to comply with paragraph (f)(1) if the creditor or its agents determine the amount of compensation paid to the fee appraiser by relying on information about rates that: (i) Is based on objective third-party information, including fee schedules, **studies**, and **surveys prepared by independent third parties** such as government agencies, academic institutions, and private research firms; (ii) Is based on recent rates paid to a representative sample of providers of appraisal services in the geographic market of the property being appraised or the fee schedules of those providers; And (iii) In the case of information based on fee schedules, **studies**, and **surveys**, such fee schedules, studies, or surveys, or the information derived therefrom, **excludes compensation paid to fee appraisers for appraisals ordered by appraisal management companies**, as defined in paragraph (f)(4)(iii) of this section.

Pages 41 & 42 have similar details, referencing TILA Section 129E

SEE NEXT PAGE FOR AMC INFORMATION

Definition of 'AMC' – Per 12 U.S.C. 3350 (11)

(11) Appraisal management company

The term “appraisal management company” means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external 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—

(A) to recruit, select, and retain appraisers;

(B) to contract with licensed and certified appraisers to perform appraisal assignments;

(C) to manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; or

(D) to review and verify the work of appraisers.

(NOTE: mortgages for commercial properties and any AMC administrative services for commercial properties are EXCLUDED from the Final Rule covering AMC’s.)

Per the Final Rule, individual States are *not required* to adopt the above definition in their legislation.

Per the Final Rule, the definition of an AMC ‘appraiser panel’ consists of appraisers who are Independent Contractors, not Employees, as defined in IRS regulations.

Per the Final Rule, **any** mortgage transaction secured by a consumer’s principal dwelling falls under the Rule if an AMC is involved – not just “Federally related” transactions.

Per the Final Rule, States “must require AMC’s to require that appraisals are conducted in accordance with the valuation independence requirements of Section 129E(a) through (i) of TILA, 15 U.S.C. 1639e(a)-(i), and regulations thereunder.”

Paragraph (i) says:

(i) Customary and reasonable fee

(1) In general

Lenders and their agents shall **compensate fee appraisers at a rate that is customary and reasonable** for appraisal services performed in the market area of the property being appraised.

Evidence for such fees may be established by objective third-party information, such as government agency fee schedules, academic studies, and independent private sector surveys.

Fee studies shall exclude assignments ordered by known appraisal management companies.

Per the Final Rule, it is left up to the individual States to enforce compliance with the AMC regulation Rules.