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Wake up call - Interim final rule on real estate appraisals

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Consistent with the directives of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Federal Reserve (Fed) has issued an Interim Final Rule (Rule). This Rule contains provisions of fundamental importance to residential appraisers. The Rule's provisions will affect the conduct and practice of residential appraisals: appraisers need to understand this Rule and provide comments quickly, given the small window (December 28, 2010).

The Fed's press release notes that the interim final Rule concentrates on two major areas. The first "ensures that real estate appraisers are free to use their independent professional judgment in assigning home values without influence or pressure from those with interests in the transactions." The second seeks to "ensure that appraisers receive customary and reasonable payments for their services."

For the full text, see <http://edocket.access.gpo.gov/2010/2010-26671.htm>. Note that the Rule applies to transactions where the property is the principal residence of a consumer.

The first part of the Rule, the "enforcement" part, clarifies some of the HVCC's provisions and closes some of the loopholes in that document. Noteworthy is that Section 129E(j) of TILA states that the HVCC will have "no force or effect on the date that the Board's interim final regulation is promulgated." The HVCC (written at the end of 2008) had a variety of unintended consequences. A portion of Dodd-Frank requires the General Accounting Office to prepare a study on the HVCC, leaving open the possibility that elements of it may return at some point, according to a study by Morrison & Foerster (www.mofo.com). This is a less than comforting thought.

The other key appraisal-related provision has to do with "customary and reasonable" fees. The Rule goes beyond Dodd Frank and adds other, not entirely satisfactory, means of achieving compliance with this requirement. These leave the door open for continuing abuses of the recent past and the possible creation of new ones. To be sure, the Rule allows for a mechanism to determine customary and reasonable fees but also creates a mechanism that allows for the "presumption of compliance" where the entire AMC debacle, which is at the root of the current problems, is inadequately addressed.

It is here that appraisers should read the Rule and provide suggestions and comments. This section directly and significantly impacts residential appraisers ability to provide reasonable fees for flexible, appropriate, and assignment specific professional appraisal services.

The industry and consumers will be faced with continued attrition in the ranks of experienced

appraisers and dilution of work product quality in an environment where fast turnarounds and ratcheted down fees prevail.

Compliance with the interim final regulation is optional through March 31st, 2011. Compliance becomes mandatory on April 1st, 2011.

Get your comments in on this. This is important. You can make your comments directly or you can voice your concerns with an appraisal organization such as the Massachusetts Board of Real Estate Appraisers (www.mbre.org). Don't oversleep on this one. And don't be caught napping. If you do, you may suffer the effects of insomnia over the long haul (or worse) due to your lack of action.

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