



November 6, 2012

Bureau of Consumer Financial Protection  
1700 G Street NW  
Washington, DC 20552

Re: Integrated Mortgage Disclosures Under RESPA and TILA  
Docket No. CFPB-2012-0028  
RIN 3170-AA19

Dear Sir or Madam:

The American Society of Appraisers (ASA) and the National Association of Independent Fee Appraisers (NAIFA),<sup>1</sup> representing thousands of our nation's leading valuation professionals, are writing in response to the Bureau's request for comment on the above-referenced Integrated Mortgage Disclosures proposal. Among the many important disclosures addressed in the proposed rule, our comments are focused on how the appraisal fee is disclosed to mortgage loan applicants in the Good Faith Estimate (GFE) and the Closing document when lenders order the appraisal through an Appraisal Management Company (AMC).<sup>2</sup> In today's residential mortgage marketplace, the vast majority of mortgage-related appraisals are ordered through AMCs (60% - 80% according to GAO<sup>3</sup>). It is also important to note that the major AMCs are affiliates of large mortgage lenders.

Our organizations' views on this important issue were previously provided to the Bureau in connection with its "Know Before You Owe" mortgage disclosure forms initiative.<sup>4</sup> That initiative sought comment on the Bureau's efforts to design new disclosure forms that would provide consumers with accurate and readily understandable information about the true costs, terms and conditions of a mortgage loan; and, allow borrowers to compare the costs, terms and conditions shown on the Good Faith Estimate with information in the Closing document.<sup>5</sup> The "Know Before You Owe" initiative also asked how the proposed prototype forms could be improved and whether there were ways to make things clearer. In response, ASA and NAIFA

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<sup>1</sup> ASA and NAIFA each teach, test and credential their members for professional appraisal practice and appraisal review in residential and commercial real property valuation. Additionally, ASA is a multi-disciplinary appraisal organization that teaches, tests and credentials its members for professional appraisal practice and appraisal review in business valuation and in personal property valuation (including machinery and equipment, fine art, antiques, gems and jewelry and the contents of homes and offices).

<sup>2</sup> In many residential mortgage originations and re-financings, lenders are either required to obtain an appraisal of the property collateralizing the loan, or they choose to use an appraisal as the most reliable way to value the collateral property.

<sup>3</sup> See "Residential Appraisals; Opportunities to Enhance Oversight of an Evolving Industry", GAO Study July 2011, p. 32.

<sup>4</sup> ASA and NAIFA joint letter of December 7, 2011 to Rajeev V. "Raj" Date. Representatives of our organizations also met with Bureau senior staff on August 16, 2012, to discuss this issue.

<sup>5</sup> The proposal would restrict the circumstances under which the lender is allowed to increase the costs of certain settlement services, such as appraisals, above the amount stated on the GFE.

urged that the final GFE and Closing documents include separate lines reflecting the portion of the appraisal fee paid to the appraiser who values the collateral property and the portion paid to the Appraisal Management Company when the lender orders the appraisal through an AMC. This comment letter reiterates that recommendation.

### **Executive Summary**

- If the GFE and Closing document fail to separate the appraiser’s fee from the AMC fee, the Bureau’s central mission of fostering consumer choice by making mortgage-related costs “clear at all stages of the mortgage process” will be severely undermined. The performance of an appraisal and the back-room administrative function of ordering and processing it, are two entirely distinct services. Combining the fees for these two distinct services on the Estimate and Closing documents is unjustified both as a matter of public policy and logic;
- Failure to separate the two fees deprives consumers of important information that would allow them to make informed decisions about the cost and likely quality of the valuation component of the mortgage lending process. Borrowers would be deprived of crucial information that would open up options available to them if they understood the likely differences in the range of costs of a professional appraisal as well as the range of qualifications and depth of experience of the individuals likely to be performing them, depending on whether the appraisal is or is not ordered through an AMC.
- An ancillary, but extremely important, benefit of separating the two fees on the GFE and Closing forms is that doing so will provide the Bureau with a real-time data set relevant to whether appraisers are receiving “customary and reasonable” fees from lenders or their AMC affiliates – a requirement of Dodd-Frank. If the GFE and Closing documents separate the appraiser fee from the AMC fee, the data collected on the portion of the appraisal fee that is actually being paid to appraisers by AMCs could readily be compared to the fee typically paid to appraisers who are not affiliated with an AMC in specific mortgage markets.
- Accordingly, our organizations respectfully urge the Bureau to modify the final version of the Estimate and Closing document to separately reflect the fee paid to the appraiser and the fee paid to an AMC. We acknowledge that the provision of Dodd-Frank authorizing the separation of these fees is not mandatory. Nevertheless, the Bureau clearly retains the authority to include this separation on the final disclosure forms; and we are convinced that Congress intended the Bureau to exercise its discretion on this issue in a way that fully protects consumers.
- If the Bureau declines to make this modification on the forms themselves, we strongly urge it to find another way to make two clear and prominent disclosures to consumers early in the underwriting process: First, that a substantial portion of their appraisal fee will not be paid to the appraiser performing the appraisal, but rather to a third party who may be an affiliate of their mortgage lender; and, second, that lenders can order appraisals directly from professional appraisers without going through an AMC.

## Discussion of Views

If the GFE and Closing Form fail to separate the appraiser's fee from the AMC fee, the Bureau's central mission will be undermined and consumer choice will be denied in the following significant ways:

First, we believe it is important to recognize that the performance of an appraisal and the backroom administrative function of ordering and processing it, are two entirely distinct services. Combining the fees for these two separate services on the Estimate and Closing documents is unjustified both as a matter of public policy and logic. Additionally, failing to separate the fees violates the CFPB's essential mission, which is to "protect and empower" consumers in what the Bureau correctly characterizes as "one of the biggest financial decisions a consumer can make"; and, it undermines the agency's objective of fostering consumer choice by making mortgage-related costs "clear at all stages of the mortgage process." Without separating the fees, consumers will have no way of knowing that a substantial portion of their payment for the services of an appraiser to value property collateralizing their mortgage loan goes to a third party. Consumers also will not know that in many situations the third party is an affiliate of the mortgage lender, and the consumer is unknowingly making a payment to the lender via its affiliate. We trust that the Bureau's final disclosure documents will not foster an arrangement in which a consumer is making an undisclosed payment to an affiliate of the mortgage lender or to any service provider.

Second, failure to separate the two fees deprives consumers of important information that would allow them to make informed decisions about the cost and likely quality of the valuation component of the mortgage lending process. Our organizations are concerned that with the rapid increase of lender reliance on AMCs, there has been an accompanying decrease in consumer understanding of the appraisal function, including how the appraisal fee is actually being disbursed. Because the Bureau's proposed GFE and settlement forms conflate the appraiser's fee with the AMC's fee, consumer choice relative to the appraisal has been effectively denied – that is, borrowers are deprived of crucial information that would open up options available to them if they understood the likely differences in the range of costs of a professional appraisal as well as the range of qualifications and depth of experience of the individuals likely to be performing them, depending on whether the appraisal is or is not ordered through an AMC.

While the cost of an appraisal ordered through an AMC is sometimes comparable to one ordered by a lender directly from an independent appraiser or appraisal firm, the AMC ordered appraisal is frequently much more expensive because of the backroom administrative costs added by the AMC. When lenders contract directly with an independent appraiser or appraisal firm to value collateral property, the AMC's backroom administrative cost is avoided, thus reducing by a significant amount the overall cost to consumers. However, if the GFE fails to disclose that the appraisal will be ordered through an AMC and fails to separately identify the portion of the consumer's payment that goes to the AMC, the borrower will have been denied essential information.

Without a breakout of the two fees on the Estimate, a borrower will have no reason to ask the lender if there is a less expensive way to have a professional appraiser value the collateral property by ordering it directly from an appraiser practicing where the collateral property is located rather than from an AMC – a process that was commonplace prior to the explosive growth of AMCs and the one most likely to produce a less costly appraisal by a more highly experienced and skilled appraiser. Without this breakout, borrowers are unknowingly locked into what is often a more costly appraisal process, dependent on less experienced appraisers who are willing to work for fees substantially below what is customarily and reasonably paid to appraisers who are independent of AMCs.

A troubling hallmark of many AMCs is the lower compensation they typically pay those on their appraiser panels.<sup>6</sup> Ironically, although AMCs generally pay their appraisers far less than what is customary and reasonable in a given market area, there is extensive evidence that many AMC ordered appraisals are substantially more expensive than those provided by independent appraisers who practice outside of the AMC process because of the added backroom costs tacked on by the AMC. In short, most AMC ordered appraisals cost the consumer more but the appraiser performing it receives less.

This means that when the residential property collateralizing a loan is complex or when housing markets are in disarray, a mortgage applicant knowledgeable about how and from whom the appraisal is ordered would have a reasonable basis for concern about the reliability of an AMC ordered appraisal. A properly detailed GFE and Closing document would go a long way toward providing such knowledge. It is not the position of our organizations that AMC-ordered appraisals are inherently less reliable than those produced outside the AMC system. All state certified and licensed residential appraisers possess requisite valuation skills and are entitled to a presumption of competency.

It is our considered judgment, however, that in many AMC engagements, there is a substantial likelihood that the appraisal will not have been performed by the most experienced and most highly qualified residential appraisers. In short, under the currently proposed settlement form prototypes (which conflate AMC costs with the appraiser's fee), borrowers will be deprived of information which could lead them to reasonably conclude that an appraisal ordered through an AMC may not produce the most reliable valuation and at a lower cost; and to express to the lender a preference for a non-AMC appraisal.

Third, the Bureau's prototype forms already recognize the importance of providing consumers with the details of the costs of certain important settlement services, specifically the fees associated with title insurance (which are appropriately broken out by the inclusion of several lines on the "1000 Title Charges" section of the settlement form prototypes). We believe that understanding the details of the appraisal fee is as important, if not moreso, to borrowers than

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<sup>6</sup> The cram down of appraisal fees to well below customary market levels by many AMCs has been disruptive of and deeply troubling to the community of professional residential appraisers. But, it should be equally troubling to consumers because the cram down has caused many of the nation's most experienced and qualified appraisers to refuse assignments from AMCs. As a result, many of the appraisers willing to accept AMC assignments have less experience, less knowledge of the collateral property's market area and have fewer overall professional credentials than their counterparts who are retained directly by lenders.

understanding the fees associated with title insurance; and that the inclusion of one additional line on the appraisal fee portion is more than justified. In this regard, it is important to point out that the prototype forms include separate lines for mortgage-related services and their associated fees which, while certainly important to borrowers, are less costly than an appraisal and, frankly, require far less labor-intensive effort and professional knowledge.

For example, the proposed forms provide separate lines for the “Credit Report Fee” (on line 901); the “Flood Determination Fee” (line 905); a Notary Fee (line 1006); and, a “Pest Inspection Fee” (line 909). Not only is the appraiser’s fee a more significant consumer expense than the other mortgage-related services cited above; but the administrative fee paid to the AMC, by itself, is also more costly in most cases. Clearly, separately identifying the appraiser’s fee and the AMC’s fee on the disclosure forms is more than justified given the detail appropriately provided consumers on less costly and less consequential services.

Fourth, an ancillary, but very important, benefit of separating the two fees on the GFE and Closing forms is that doing so will provide the Bureau with a real-world data set relevant to the issue of whether appraisers are receiving “customary and reasonable” fees from lenders or their AMC affiliates. Dodd-Frank requires the Bureau to implement and enforce its “customary and reasonable” fee requirement. If the GFE and Closing documents separate the appraiser fee from the AMC fee, the data collected on the portion of the appraisal fee that is actually paid to the appraiser by an AMC could be easily compared to the fee typically paid to independent appraisers not affiliated with an AMC in a specific mortgage market. This on-going, real time data stream would be enormously useful to the Bureau in determining, pursuant to Dodd-Frank, whether appraisers are or are not being paid customary and reasonable fees.

It is also noteworthy that in situations where a mortgage lender orders appraisals directly from an independent appraiser (rather than through an AMC), the lender’s administrative costs for doing so are added to, and typically treated as part of, the lender’s “Origination Charges.” Under such circumstances, the consumer clearly understands that the appraisal fee on the GFE and settlement forms is actually the fee paid to the appraiser. As a matter of consumer protection and clarity, we fail to understand why, when the lender uses an AMC to order the appraisal, the administrative costs associated with that order are lumped together on the appraisal line. When the two fees are conflated, the borrower has no way of knowing the true cost either of the actual appraisal or of the administrative activities that result in an order for an appraisal. We strongly believe that the administrative costs associated with ordering an appraisal – whether it is ordered by the lender through an AMC or directly with an independent appraiser – should not be included in the cost of the appraisal itself.

If the CFPB adopts our recommendation, then all consumers applying for and closing on a mortgage will receive accurate and comparable information about the actual cost of the appraisal itself, irrespective of how it is ordered, with all the attendant benefits to consumers and to the Bureau described above.<sup>7</sup>

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<sup>7</sup> On the other hand, if the final disclosure forms continue to conflate the AMC fee with the appraiser’s fee, the following scenario – or one very much like it – is almost certain to occur repeatedly: Two consumers apply for mortgages at about the same time, but from different lenders, to purchase homes in the same “cookie cutter” residential development (their homes might even be adjacent to or across the street from one another). (cont.)

Accordingly and for the reasons stated above, we respectfully urge the Bureau to make a simple, but vital, modification to the prototype settlement forms by adding a single additional data point to the “Appraisal Fee” line of the settlement form. When the mortgage lender orders the appraisal through an AMC, the addition of this data point would result in disclosure to borrowers of how much of the appraisal fee is being paid to the appraiser and how much to the AMC. Although Dodd-Frank does not mandate this separation of fees, neither does it prohibit it. Clearly, the Bureau retains the authority to require it if the fee separation will enhance consumer choice.

If the Bureau declines to adopt our recommended modification of the Good Faith Estimate and Closure forms, we strongly urge it to find another way to make a clear and prominent disclosure to consumers – early in the underwriting process – that a substantial portion of their appraisal fee will not be paid to the appraiser performing the appraisal but rather to a third party who may be an affiliate of their mortgage lender.

If you have any questions about the views expressed in our comment letter, please contact the government relations representative of our organizations, Peter Barash, in DC, 202-466-2221, [peter@barashassociates.com](mailto:peter@barashassociates.com); or John Russell, ASA’s Director of Government Relations, 703-733-2103, [jrussell@appraisers.org](mailto:jrussell@appraisers.org).

Sincerely,  
American Society of Appraisers  
National Association of Independent Fee Appraisers

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Each borrower goes to settlement about the same time. The lender for consumer “A” orders the appraisal through an AMC while the lender for consumer “B” orders the appraisal directly from an independent appraiser. The appraisal fee shown on the GFE and closing forms of consumer A” is \$675.00. The appraisal fee on the GFE and closing forms of consumer “B” is \$475.00 If the two new neighbors compare notes on their mortgage experiences, there would likely be substantial confusion about why the appraisal fees to value two cookie cutter homes are so markedly different. The obvious reason for the confusion is that consumer “A” has been kept in the dark about what he is actually paying for the appraisal itself and who actually received the payment. The obvious cause of the confusion is the failure of the GFE and settlement forms to separately disclose the appraiser’s fee and the AMC’s fee. The CFPB should not permit consumers to become victims of this lack of clarity.