



Virginia Housing Commission ***Opposition to S 1575***

September 26, 2017

Dear Chairman Peace and distinguished members of the Virginia Housing Commission:

On behalf of the Real Estate Valuation Advocacy Association ([REVAA](#)) and the Virginia registered appraisal management companies (AMCs) we represent, thank you for the opportunity to share our opposition to S 1575.

Virginia's current AMC statute and the subsequent rules by the Virginia Real Estate Appraiser Board (VREAB) appear to be compliant with federal law (129E(i) of TILA (15 U.S.C. §1601 et seq.) and regulations promulgated thereunder. While federal law does allow a state to expand its authority to enforce more restrictive provisions on customary and reasonable fees, none of the other 44 states that currently have AMC statutes in place (or the five states considering legislation) have chosen to expand their authority by setting fees or interfering with the free-market.

Consistent with our position as outlined during the 2017 legislative session, we believe S 1575 to be unnecessary, anti-competitive and needlessly forces Virginia out of federal compliance with its AMC program. Furthermore, none of the proposed revisions in S 1575 provide any benefit to the residents of the Commonwealth in obtaining a residential appraisal.

S 1575 is Without a Demonstrated Need

Today, 45 states, including Virginia, have passed legislation to regulate AMCs and the remaining five states without an AMC law are in the process of passing AMC legislation. In each of the aforementioned states, the provisions for the payment of customary and reasonable fees is consistent with the Federal Reserve Board's (FRB) Interim Final Rule, which amended Regulation Z of the Truth in Lending Act (TILA) in order to implement Section 129E

There is no demonstrated need or proof of the advancement of a public good by enacting S 1575, making Virginia one of most, if not the most restrictive states for the payment of customary and reasonable fees to appraisers. It is our understanding that there are very few, if any, enforcement actions by the Virginia Real Estate Appraiser Board against AMCs for not paying customary and reasonable fees. Furthermore, we are not aware of any legal actions in Virginia involving AMCs and the payment of customary and reasonable fees to appraisers.

AMCs and the lenders who serve Virginia's homebuyers, whether they are based in the Commonwealth or a simply a licensee, rely on state to state consistency to ensure efficient service.

S 1575 is Anti-Competitive

Current Virginia statute mirrors the federal minimum standards, which includes giving lenders and AMCs the ability to use multiple means to satisfy payment of customary and reasonable fees, including process that pay appropriate market based fees. S 1575 seeks to place significant limits on the free-market based method of complying with the Interim Final Rule, TILA and Reg Z, by requiring the payment of appraisal fees based on a highly restricted set of data that is generally not readily or easily available to AMCs. In effect, S 1975 would effectively eliminate the primary method of compliance with the payment of customary and reasonable fees through an unreasonable restriction on the gathering of data to calculate the proper free-market based fees, all the lone benefit of appraisers and the detriment of consumers that would pay higher appraisal fees. In essence, S 1975 promotes anti-competitive activity and is contrary to the intent of Congress in passing Dodd-Frank and the subsequent federal guidance.

Federal Reserve Board (FRB) - In October 2010, the Federal Reserve Board issued the Interim Final Rule that amended Regulation Z in the Truth in Lending Act (TILA) to implement Section 129E. In its commentary, the FRB clarified that the two presumptions of compliance identified within the rules are examples and not the only permissible ways for lenders and their agents to comply with the customary and reasonable fee provisions under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Specifically, the FRB comments stipulate that “if a creditor or its agent does not meet one of the [identified presumptions of compliance], the creditor’s and its agent’s compliance with the requirement to pay a fee appraiser at a customary and reasonable rate is determined based upon all of the facts and circumstances without a presumption of either compliance or violation.”

Further, the FRB explained that the reason the commentary was included in the Interim Final Rule was to clarify that various other market-based approaches to appraiser compensation exist, beyond the two identified, that could be valid and compliant approaches. For instance, the FRB explicitly defined options such as negotiating fees in good faith for assignments with appraisers by communicating bids submitted by other appraisers qualified for the same assignment and/or the negotiation of volume discounts.

Thus, restricting an AMC’s or lender’s ability to utilize more than the two identified presumptions of compliance is contrary to Dodd-Frank, the Interim Final Rule, TILA and Reg Z, is anti-competitive and inhibits the ability of lenders and AMCs to use other market-based approaches to compensate appraisers.

Federal Financial Institutions Examination Council (FFIEC) - In its March 2017 joint report to Congress, the member agencies of the Federal Financial Institutions Examination Council (FFIEC), the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation in conjunction with the National Credit Union Administration, provided the following in regard to the intent in allowing multiple ways to satisfy the customary and reasonable fee requirement:

“When it issued the 2010 interim final rule, the Board determined that the statute’s requirement for paying “customary and reasonable” fees did not authorize the Board to set appraiser fees at a particular level. Accordingly, the interim final rule gives lenders two market-based methods to follow.”

The Federal Trade Commission (FTC) – The FTC has filed a complaint with the Louisiana Real Estate Appraisers Board (LREAB), which is anticipated to be adjudicated in a hearing in January/February 2018. In it, the FTC has alleged that requiring a specific method of payment to appraisers “prevents AMCs and appraisers from arriving at appraisal fees through bona fide negotiation and through the operation of the free-market.”

Further, in response to legislation proposed in North Carolina that is similar in purpose to S 1575, the FTC commented about the Interim Final Rule:

“As alleged in the FTC Louisiana Board Complaint, we believe that the Final Rule does not require states to impose upon AMCs standards for customary and reasonable fees at any particular level”

S 1575 Needlessly Renders Virginia Non-Compliant with Federal AMC Requirements

Virginia’s AMC statute currently complies with federal minimum guidelines the Interim Final Rule and the TILA as it pertains to customary and reasonable fees (129E(i) of TILA (15 U.S.C. §1601 et seq.) and regulations promulgated thereunder. According to the Appraisal Subcommittee in its counsel on North Carolina legislation like S 1575:

“One of the ASC’s core functions is to monitor the requirements established by States that elect to register and supervise the operations and activities of appraisal management companies (AMCs). States with an AMC regulatory program (AMC Program) are evaluated by the ASC to determine compliance or lack thereof with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 as amended (Title XI), and to assess implementation of the minimum requirements for State registration and supervision of AMCs as established by the AMC Rule. Specific to TILA, the AMC Rule requires States to “[i]mpose requirements on AMCs to [e]stablish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with the requirements of section 129E(a) through (i) of the Truth in Lending Act [TILA], 15 U.S.C. 1639e(a) through (i), and regulations thereunder.” So long as a State imposes this requirement on AMCs, they will be compliant with this minimum requirement of the AMC Rule.”

About REVAA and Appraisal Management Companies

REVAA is a 501 (c)(6) organization that advocates on behalf of AMC public policy priorities. Member companies are committed to compliance and are steadfast in protecting the public interest in Virginia by ensuring independence, quality, and efficiency in the mortgage valuation process. In addition, to appraisals, many REVAA members also provide other important lender valuation services such as Broker Price Opinions (BPO) and Alternative Valuation Methods (AVM).

AMCs are third-party service providers hired by lenders and/or other financial institutions (from local credit unions and main street banks to large national lenders) to manage an independent and compliant process to determine the price and/or value of a residential real estate. AMCs work with certified appraisers and other real estate professionals in Virginia and across the nation to get this work accomplished.

Residential lenders consider AMCs highly-valued partners due to the many essential valuation-related and consumer protection functions they fulfill, including:

- Maintaining a qualified panel of licensed appraisers ready to execute lender valuation assignments.
- Ensuring appraiser independence by safeguarding against fraud and undue influence.
- Providing quality assurance processes in the delivery of final appraisal and valuation products.
- Supporting a smooth, timely and responsive mortgage process for consumers and lenders.
- Complying with federal and state laws governing valuation products and services.

REVAA members adhere to industry best practices that set a high-bar to ensure they are compliant, which is closely scrutinized by lender clients and state regulators, including the timely payment of customary and reasonable fees in accordance with federal law and reinforced in Virginia statute.

Please join us in opposing S 1575.

Thank you for considering our comments, we are happy to assist with any questions.

Sincerely,



Mark Schiffman
Executive Director

