

There are Two Presumptions of Compliance

Presumption of Compliance 1 States:

"AMCs are presumed to comply with this requirement by compensating fee appraisers 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, AMCs must review the following factors and make any adjustments to recent rates paid in the relevant geographic market to ensure the compensation is reasonable: 1) the type of property; 2) the scope of work; 3) the time in which appraisal services are required to be performed; 4) fee appraiser qualifications; 5) fee appraiser experience and professional record; and 6) fee appraiser work quality. AMCs must not engage in any anticompetitive acts in violation of state or federal law that affect the compensation paid to fee appraise."

If the AMC that authored the email is utilizing Presumption of Compliance 1, they left out a few key requirements to consider in the customary and reasonable compensation paid to appraisers.

Presumption of Compliance 2 states:

"AMCs, alternatively, are presumed to comply with this requirement by determining the amount of compensation paid to fee appraisers by relying on information about rates that: 1) 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; 2) 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 3) 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 AMCs."

The commentary associated with the Final Rules of Dodd Frank clarified that if an AMC utilizes the Alternative Presumption of Compliance **all three requirements must be met.**

"42(f)(3) Alternative Presumption of Compliance

Rates Based on Objective Third-Party Information

Section 226.42(f)(3) provides creditors and their agents with an alternative means to qualify for a presumption of compliance with the requirement to pay fee appraisers at a customary and reasonable rate under § 226.42(f)(1). Specifically, a creditor and its

*agents are presumed to comply with the requirement if the creditor or its agents determine the amount of compensation paid to the fee appraiser by relying on rates in the geographic market of the property being appraised **that satisfies three conditions**. First, the information must be established by 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 (§ 226.42(f)(3)(i)). Second, it must be 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 (§ 226.42(f)(3)(ii)). Third, in the case of fee schedules, studies, and surveys, such fee schedules, studies and surveys or information derived from them must exclude compensation paid to fee appraisers for appraisals ordered by an AMC, as defined in § 226.42(f)(4)(iii)."*

If the AMC that authored the email is utilizing the Alternative Presumption of Compliance, they also left out a few key requirements that must be considered in the customary and reasonable compensation to appraisers.

What is really disturbing in the email sent to appraisers by this AMC, whether intentional or not, they point blank state they are in compliance! Here is a bit of information the AMCs need to understand:

The Commonwealth of Virginia, Department of Occupational Regulation, Real Estate Appraiser Board is the regulatory agency that has the authority, granted to them by the Dodd Frank Act, to determine if the fee paid to an appraiser is customary and reasonable! The commentary with the final rules clearly state:

*"Comment 42(f)(3)-1 explains that a creditor and its agent are presumed to comply with § 226.42(f)(1) if the creditor or its agent determine the compensation paid to a fee appraiser based on information about rates **that satisfies the three conditions discussed above**. This comment clarifies that reliance on information satisfying these conditions is not a requirement for compliance with § 226.42(f)(1), but creates a presumption that the creditor or its agent has complied. **The comment further clarifies that a person may rebut this presumption with evidence that the rate of compensation paid to a fee appraiser by the creditor or its agent is not customary and reasonable.**"*