



**Statement Of  
The National Association Of Realtors®  
Before The U.S. Senate  
Committee On Banking, Housing And Urban Affairs  
Subcommittee On Housing And Transportation  
Regarding  
The Real Estate Appraisal Industry And Title XI Of The  
Financial Institutions Reform, Recovery And Enforcement Act Of 1989**

Mr. Chairman, Members of the Subcommittee, the NATIONAL ASSOCIATION OF REALTORS® (NAR) appreciates the opportunity to submit written testimony regarding the Real Estate Appraisal Industry and Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). NAR is the nation's largest professional trade association with almost a million members and is comprised of over 1500 REALTOR® associations and boards at the state and local levels. NAR membership includes brokers, salespeople, property managers, appraisers and counselors as well as others engaged in every aspect of the real estate industry.

NAR commends the Subcommittee for its leadership in recognizing that the real estate industry has changed, and also in asserting your proper role to examine the effectiveness of the current federal and state regulatory structure as set forth in Title XI of FIRREA. NAR also applauds the Subcommittee for highlighting the General Accounting Office's (GAO) report on enhancing oversight of the real estate appraisal industry. The GAO report points out that federal, state and private entities face impediments in carrying out essential activities called for in Title XI of FIRREA. In addition to impediments, agency regulatory officials, mortgage industry representatives, the Department of Housing and Urban Development and government-sponsored enterprises such as Fannie Mae and Freddie Mac all raised concerns about the regulatory structure created by Title XI. NAR believes that the current regulatory structure is overly complex, inconsistent from state-to-state and in need of thorough review and examination by Congress.

## **TITLE XI of FIRREA**

### **1. Lack of Consistent Enforcement**

Title XI of FIRREA was enacted to protect Federal financial and public policy interests in real estate related transactions by requiring that real estate appraisals be performed by individuals with demonstrated competency. Since FIRREA was passed fifteen years ago, and because it mandated state licensing under federal standards, the regulatory structure for appraisers has evolved into a unique and complex system. It involves licensing boards in the various states, qualification criteria and uniform standards set by the Appraisal Foundation and federal oversight by the Appraisal Subcommittee of the Federal Financial Institutions Examinations Council. State licensing boards license, certify and provide oversight and enforcement of nationally recognized standards (the Uniform Standards of Professional Appraisal Practice) and state laws.

Since Title XI was enacted, it has been difficult to achieve necessary consistency among the states for enforcement of both standards and certification requirements. With a patchwork of state laws and ineffective federal oversight allowing for only "minimum" qualifications criteria for licensing and certification in some cases, states and the federal oversight bodies have too often not carried out their specific intended responsibility to enforce the standards as required by the federal law. Too often, complaints against real estate appraisers in some states are not reviewed by state appraiser boards, leading to a lack of disciplinary action against poorly performing appraisers. Other boards have been known to spend inordinate time and research and collect fines for inconsequential

offenses, leaving little time for enforcement of major issues.

The lack of consistent enforcement among the states is due in part to the fact that many states do not adequately fund enforcement and licensing. As a result, certification boards are forced to choose the cases that are investigated based on the nature of the violation, as opposed to investigating each complaint thoroughly. Additionally, there is no consistent requirement among the states that either appraisers or lenders report erroneous appraisals to the state enforcement board. Also, some states see the requirement to certify licensing as an unfunded federal mandate, and with many of them facing budget restraints it is not difficult to see why there is not uniform enforcement.

Even though adequate funding of the licensing, certification, investigation and disciplinary activities may be a problem in some states, it is by no means universal or pervasive. States actually do license and certify appraisers and evaluate, approve and disapprove pre-licensing educational offerings. States do evaluate, approve and disapprove continuing education course offerings and require regular continuing education of their licensees. States receive complaints, investigate and prosecute appraisers for violations of their license law and the Uniform Standards of Professional Appraisal Practice (USPAP). However, one of the major problems is that states rarely receive complaints from the federally regulated lenders, HUD, VA, Fannie Mae and Freddie Mac. These entities too often fail to inform states of poor appraisals, poor practitioners or fail to file complaints with the appropriate state-licensing agency or if they do so they do it in an incomplete and lackadaisical manner.

## **2. Lack of Qualified Appraisers**

Many state appraisal boards fail to resolve complaints against real estate appraisers in an expeditious manner. Whether through a lack of resources or a lack of will by those charged with providing oversight, the current system allows some unscrupulous and unqualified appraisers to continue practicing with little or no recourse for their actions.

One of the fundamental goals of Title XI was to raise the professionalism of appraisers involved in federally related transactions, however, this has not been met. Having provided for only "minimum" qualification requirements, the implementation of FIRREA has failed to offer incentives for appraisers to seek additional training, education and experience. We believe the public would be better served by a system that encourages appraisers to excel through appropriate professional development because many appraisers see acquiring a license as the be-all and end-all of becoming an appraiser. NAR supports a licensed or certified appraisal for all federally related transactions. NAR believes that relying on appraisals more often will lead to better loan underwriting. NAR believes that appraisals performed by certified and licensed practitioners with higher than minimal qualifications will help protect consumers from unscrupulous lenders and inflated transactions.

## **3. Lack of Purpose and Direction for the Appraisal Foundation, Appraisal Standards Board, Appraisal Qualifications Board and Appraisal Subcommittee**

NAR is concerned about the direction and purpose of the Appraisal Foundation, the Foundation's Appraisal Standards Board (ASB) and the Foundation's Appraiser Qualifications Board (AQB). NAR questions the propriety of a private organization (Appraisal Foundation) promulgating standards for appraisals and qualifications of appraisers, which must then be adopted and enforced by state regulatory agencies. These standards and criteria have the effect of law but they have been adopted completely outside the State legislative process. Appointed individuals without any type of government control or oversight have the power to promulgate these standards. Even though the standards and criteria are issued for public comment, they are nonetheless discussed, debated, decided and mandated by independent and autonomous Boards of the Appraisal Foundation in non-public meetings. This is in direct contradiction to some state laws.

NAR also questions the lack of responsiveness and accountability from the Appraisal Foundation, its ASB and its AQB to their professional association sponsors. There is a significant amount of concentrated power given to a relatively small number of individuals where the sponsoring organizations have no means of appointing or providing oversight. For example, NAR has tried for

several years to limit the USPAP to "Appraisal Practice" by asking that Standards 4 and 5 be removed from the document because we believe, along with other groups, that Title XI pertains to appraisals, not consulting assignments. We contend that the mandate to the states in Title XI was to license, certify and regulate appraisers, not counselors.

In some states, the Appraisal Foundation, the ASB and the AQB have exceeded their authority and have, in effect, acted as regulatory bodies over the state regulatory agencies. For example, the AQB has previously restricted the licensing authority of some states. They have disapproved a number of state-approved pre-licensing and continuing education courses because of minor technical differences and have imposed their own arbitrary criteria.

The AQB has adopted a number of arbitrary requirements, which could be construed as conflicts of interest. For example, the national USPAP course mandated by the AQB requires either AQB approval or use of their course and examination with royalty paid to the AQB. The national USPAP update course and examination has a similar approval structure. Also, the AQB requires all USPAP instructors to meet their standards and only instructors taking an Instructor Certification Course can meet the standards. The only approved Instructor Certification Course is presented by the ASB and taught by ASB members.

The purpose of the Appraisal Subcommittee is to provide control and oversight of the Appraisal Foundation, the ASB and AQB, and to protect the public, appraisers and instructors from these conflicts. However, the Appraisal Subcommittee often remains silent and thus conveys the impression that they are working in concert with the Appraisal Foundation and the members of its ASB and AQB. NAR recommends that an appeal process to an independent third party be established and that courses and instructors be approved by either the State Licensing Board or the AQB.

NAR believes that there is a lack of consistent and effective oversight of state appraisal boards by the Appraisal Subcommittee. Oversight of all state regulatory boards is vested in the Appraisal Subcommittee; however, the Appraisal Subcommittee is made up of representatives of the lending and banking industry - designees of the heads of the Federal financial institutions regulatory agencies. In our opinion, the current oversight of the Appraisal regulatory structure is more vested toward the lending industry. The problem is that these regulatory agencies are the ones that regularly propose and pass rules to increase the de minimus level. By increasing the de minimus level, they reduce the consumer protections that Title XI of FIRREA was intended to provide by requiring appraisals for all federally related transactions. As the de minimus level is increased it negates the need for an appraisal thus denying protections to the consumer.

### **APPRAISALS and the DE MINIMUS LEVEL**

Over time, most residential real estate transactions have been exempt from obtaining an appraisal because the de minimus level, in which a certified or licensed appraisal would be required, has been raised to \$250,000. NAR has had long standing policy that the de minimus level for residential property should not exceed \$100,000. There are a large number of transactions that could avoid the appraisal process altogether because the median sales price in many major markets and smaller markets is below \$250,000.

NAR recognizes that there are cases when an appraisal for a mortgage loan transaction should not be a requirement, but relying solely on the dollar amount of the transaction as the determinant is a poor measure. There are other factors such as loan to value, predominant value in the region, qualifications of the borrower, strength of the real estate market and its trend that should be considered as well.

Recognizing that the de minimus level in all likelihood will not be lowered back to \$100,000 for residential loans, NAR believes that lenders should be required to inform a borrower of the methods used to value a property to determine the amount of the mortgage loan, and that borrowers should have the right to be provided with a copy of each value estimate or value opinion obtained.

Many buyers, particularly first time buyers, are not aware of their options and rights. They do not

fully understand the purpose of the appraisal or value estimate and may not be taking full advantage of the safety, security and utility of an independent, third party opinion of value. NAR firmly believes that a full appraisal report, prepared by a state certified or licensed appraiser, may be useful to the buyer in assuring them of the validity of the price paid for the property and securing the proper amount of insurance.

Further, lenders often obtain multiple estimates or opinions of the value of the collateral. In the event that more than one estimate is obtained on behalf of the borrower, NAR believes that the consumer should be provided with all of the value estimates or opinions of value. In this way, the purchaser can be assured that the value estimate supports the price of the property.

## **LENDER PRESSURE**

There are some participants in the mortgage process that pressure appraisers in order to ensure that their estimates of the fair market value of collateral property are sufficient to make predetermined loan amounts. Increasingly there is evidence that the use of such pressure is widespread in the appraisal field. These pressures are beginning to erode the independent judgment of appraisers, and are contributing to the ability of unscrupulous individuals to engage in improper loan practices, including property flipping and predatory lending schemes. While the most immediate victims of these practices are the elderly, lower income families and other vulnerable consumers, they also damage mainstream lenders and federal housing assistance programs.

## **CONCLUSION**

NAR believes that the oversight of the appraisal regulatory structure should be geared toward the interests of consumers and the protections the consumer should expect from an independently developed, unbiased, objective third party opinion of value of the real property offered as security for a loan. The Uniform Standards of Professional Appraisal Practice (USPAP) were originally developed by professional appraisal organizations to ensure public trust in the appraisal profession. We believe the standards should concentrate on their original purpose, which is to ensure trust in the appraisal practice. Finally, the failure to report faulty appraisal reports and deficient appraisers to the appropriate state regulatory boards continues to be a serious problem.

NAR appreciates the opportunity to share its views and observations and we stand ready to work with the Subcommittee to improve effectiveness of the current federal and state regulatory structure as set forth in Title XI of FIRREA.

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