

2008 2nd Quarter Government Relations Report

Federal Legislation

Housing and Economic Recovery Act of 2008

On July 26, Congress approved and sent to the President House Resolution 3221 (H.R. 3221), a bill that contains several expansive housing-related initiatives, including the regulatory overhaul of Fannie Mae and Freddie Mac, modernization of the Federal Housing Administration (FHA), and national licensing requirements for mortgage brokers and bank loan officers. The centerpiece of this legislation is an innovative program aimed at keeping families in their homes and relieving lenders from the prospect of major losses taken with foreclosure. Thanks to the efforts of the Appraisal Institute and our partner organizations, HR 3221 contains strong appraisal requirements with this innovative program. In addition, H.R. 3221 raises eligibility requirements to become a FHA approved appraiser, requiring new FHA appraisers to be state Certified or professionally designated by a nationally recognized professional appraisal association like the Appraisal Institute. Finally, the bill contains strong appraiser independence requirements for the FHA appraisal program.

We applaud Congress for recognizing the importance of an independent appraisal process and for acting on behalf of the best interests of homeowners and lenders. The Appraisal Institute strongly believes that quality valuations performed by competent and ethical appraisers are an essential part of government guaranteed loans, and we're delighted that our policymakers took the steps necessary to ensure that our government's lending policies are safeguarded. The bill is expected to be signed by the President the last week of July. While we are hopeful the bill will be implemented quickly, we anticipate certain aspects will be subject to interpretation and debate, and we look forward to participating at that level.

For a full summary of the bill, click [here](#):

Appraiser Regulatory Reform

A number of bills have been introduced in the 110th Congress to combat mortgage fraud and predatory lending, some of which also address issues that are important to appraisers, such as appraisal independence and appraisal regulatory reform. The most significant bill in this regard is **House Resolution 3915**, *The Mortgage Reform and Anti-Predatory Lending Act*, which passed the House late November and has now been referred to the Senate Committee on Banking, Housing and Urban Affairs.

H. R. 3915, introduced by Rep. Brad Miller (D-NC) represents a bi-partisan solution to predatory lending/mortgage fraud. The bill includes provisions from **H.R.3837**, *the Escrow, Appraisal and Mortgage Servicing Improvements Act*, introduced by Rep. Paul Kanjorski (D-PA) and added to **H.R. 3915** as an amendment. These provisions would:

- Promote appraisal independence by banning improper influence of appraisers through acts such as coercion, extortion, collusion, compensation, instruction, inducement, intimidation, non-payment or bribery. Civil penalties: first offense: \$10,000, second offense: \$20,000.
- Promote more transparency of the Appraisal Subcommittee by requiring more detailed reports by the Appraisal Subcommittee (ASC).
- Give the ASC the authority to issue binding rules and regulations, after public notice and opportunity for comment, in the areas of temporary practice, national registry, information sharing and enforcement.
- Create a national registry for state appraisal agencies to report license or certification suspensions or revocations.
- Increase appraiser license registration fees from \$25 to \$40, and allow the ASC to use the fees to make grants to state appraisal agencies to help defray enforcement costs.
- Give the ASC the authority to monitor funding and staffing levels of the State appraiser certifying and licensing agencies so they are at proper levels.
- Give the ASC the authority to impose interim sanctions and suspensions on state appraiser certifying and licensing agencies if they are found to be out of compliance.
- Permit special consideration of appraisers' designations or training from professional appraisal organizations as an indication of their proficiency.
- Call for a Government Accountability Office study on improving the appraisal process and the effectiveness of state compliance efforts. Additionally, the study would examine the existing de minimis.

Another bill introduced in 2008 to combat mortgage fraud/predatory lending and promote appraiser independence is **S. 2860**, the *Fair Value and Independent Appraisal Act*, introduced by Senators Bob Casey (D-PA) and Mel Martinez (R-FL). This bill is similar to H.R. 3915 but does not include Title XI of FIRREA reforms.

Appraiser Bonding Proposals

Two bills being introduced in the Senate (**S. 2452** and **S. 1299**) include provisions that would require appraisers to carry a surety bond. The Appraisal Institute is strongly opposing these measures as introduced.

- **S. 2452** -- Introduced by Sen. Christopher Dodd (D-CT), chairman of the Senate Banking, Housing and Urban Affairs Committee, *The Homeownership Preservation and Protection Act* would prohibit mortgage brokers from steering prime borrowers to more expensive subprime loans, create a fiduciary duty for mortgage brokers toward borrowers, and prohibit prepayment penalties and yield spread premiums. Appraisal provisions include banning lenders from "encouraging" or "influencing" an appraiser to "hit" a certain value in connection with making a home loan and require appraisers to carry a bond.
- **S. 1299**- Introduced by Sen. Charles Schumer (D-NY), *The Borrower's Protection Act* would increase federal oversight of mortgage brokers and establish standards to assess a

borrower's ability to repay. The bill would extend federal enforcement of the Truth in Lending Act to all mortgage brokers and non-bank loan originators and hold lenders accountable for the actions of brokers and appraisers. Appraisers will be required to carry a bond.

Status on Predatory Lending Proposals

The Senate may take up predatory lending legislation in the fall, and it is possible that appraiser regulatory reform (including provisions from H.R. 3915, S. 2860, and S. 2452) may be part of those discussions. S. 2860 is a likely starting point for action on appraisal reform in the Senate Banking Committee given its bipartisan sponsorship.

The Appraisal Institute is actively educating members of the Senate about the devastating effects requiring appraisers to carry a surety bond would have on the appraisal profession. The insurance industry has provided estimates to the Appraisal Institute showing the cost of carrying a bond proposed in S. 2452 to be between \$30,000 and \$50,000 per appraiser. The bonding proposal is generally not workable from an insurance underwriting standpoint, as well. As alternatives to the bonding proposal, the Appraisal Institute is actively lobbying for reforms to Title XI of FIRREA and more aggressive enforcement of existing laws, including the provisions found in H.R. 3915 and S. 2860. This will remain a front line issue for the Appraisal Institute as the Congress explores the predatory lending issue.

New York Attorney General Andrew Cuomo agreement with Fannie Mae/Freddie Mac/OFHEO

New York Attorney General Andrew Cuomo announced on March 3, 2008 an agreement with the Office of Federal Housing Enterprise Oversight, Fannie Mae and Freddie Mac that significantly changes how appraisals are ordered and managed for loans sold to Fannie Mae and Freddie Mac. Fannie Mae and Freddie Mac have agreed to adopt a Home Valuation Code of Conduct (HVCC) establishing requirements governing appraisal selection. The code of conduct prohibits pressuring an appraiser to reach a predetermined value. The code of conduct also prohibits lenders from using in-house appraiser or appraisers employed by subsidiaries of the lender.

On April 30th, the Appraisal Institute led an industry response to the HVCC outlining many of the concerns of members of the Appraisal Institute, along with real and tangible solutions for avoiding unintended consequences. The comment letter was based on extensive feedback from Appraisal Institute membership, including member surveys and more than 1,000 comments received in a comment inbox created by the Appraisal Institute. Following release of our comment letter, we conducted outreach to the parties to explain member concerns, including having the General Counsel of the Office of Federal Housing Enterprise Oversight as a keynote speaker at the 2008 Leadership Development and Advisory Council meeting in Washington.

HVCC Status

The parties to the agreement are in the midst of finalizing changes to the HVCC, and may release the final version as early as the first week of August for implementation in 2009. Since the comment period on the HVCC ended in April, we have continued to urge the parties to make changes to the HVCC to avoid unintended consequences. While the final result is unknown at this time, we are confident member concerns have been understood and given great consideration. The Appraisal Institute's advocacy on behalf of its members will not end with the release of the HVCC, as there are

several corollaries to this issue in separate but related policy initiatives, including pending changes to RESPA and potential legislation on Capitol Hill.

Federal Regulations

Regulation Z

The Appraisal Institute achieved another victory in July with the Federal Reserve's release of the Final Rule that updates the Truth-in-Lending Act (Regulation Z). The newly revised Regulation Z includes a provision suggested by the Appraisal Institute last year to strictly prohibit creditors, mortgage brokers or their agents from coercing real estate appraisers. The new rules are backed by the strong oversight and enforcement powers of the Federal Reserve, and bring much needed attention and resources to an issue of long-standing concern to Appraisal Institute members.

To view the Final Rule, click [here](#).

RESPA Proposed Rule

The Appraisal Institute led an industry response calling for the withdrawal of a proposed rule altering the Real Estate Settlement Procedures Act (RESPA) for failing to promote transparency of real estate settlement costs to consumers. The organizations, in the comment letter sent in June to the Department of Housing and Urban Development, expressed concerns that the proposal would allow fees to be hidden or disguised from consumers and consumers to be charged more than actual costs through average cost pricing.

The organizations expressed concern over common industry practices that allow consumers to be charged additional loan processing fees through the line item for appraisal fees. It is increasingly common for local appraisers – those actually performing the appraisal assignment and subject to requirements of the Uniform Standards of Professional Appraisal Practice – to be paid only a small percentage of the actual appraisal fee charged to the consumer and presently reported on Line 803 of the HUD-1 as “appraisal fee.” As much as 60 percent of some “appraisal fees” charged to consumers today are actually being paid to appraisal management companies, which are actually loan processing functions, according to the organizations. The result is that in many transactions, loan processing fees are misleadingly labeled as appraisal fees and being charged to consumers.

The organizations also expressed concern about allowing “average cost pricing” for settlement services is essentially a green light to charge some consumers more than what was actually paid to the appraiser (settlement service provider) for the services conducted in the performance of the consumer's loan. This is contrary to the goals of adequately informing consumers of settlement services charges, and the appraisal organizations fear it will result in widespread consumer abuse.

To view the full statement from the Appraisal Institute, click [here](#).

State Legislation

Colorado

In June 2008, the state of Colorado enacted HB 1353 to strengthen Colorado's Conservation Easement Tax Credit Program to prevent abuses. Conservation easements are sold or donated by private landowners to nonprofit or governmental entities to guarantee that a parcel of land will never

be developed. The new and tougher standards signed into law include increased accountability for conservation easement appraisals, a certification program for the groups that hold conservation easements, strengthened oversight and enforcement of the state tax credit, and the creation of a Conservation Easement Oversight Commission.

To view the bill, [click here](#).

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Official Comments of the Appraisal Institute can be found [here](#).