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June 11, 2018

Ms. Kristen Worman  
General Counsel  
Texas Appraiser Licensing and Certification Board  
P.O. Box 12188  
Austin, Texas 78711-2188

***Via Email to [general.counsel@talcb.texas.gov](mailto:general.counsel@talcb.texas.gov)***

**RE: Proposed New §155.3, “Work Relating to Commercial Real Estate Transactions”**

Dear Ms. Worman:

The Appraisal Institute (AI) appreciates the opportunity to submit these comments in support of the adoption of the proposed new section of the Texas Administrative Code (TAC) s. 155.3, “Work Relating to Commercial Real Estate Transactions” that was published in the Texas Register (43 TexReg 2931) on May 11, 2018.

The AI is a global professional association of real estate appraisers. Its mission is to advance professionalism and ethics, global standards, methodologies, and practices through the professional development of property economics worldwide.

Federally regulated financial institutions are permitted to utilize evaluations that are not compliant with the Uniform Standards of Professional Appraisal Practice (USPAP) in lieu of fully USPAP compliant appraisals for four categories of real estate related financial transactions<sup>1</sup>, including the commercial real estate transactions identified in this proposed rule. Pursuant to the Interagency Appraisal and Evaluation Guidelines (IAEG), an evaluation is required to contain “a reliable estimate of the collateral’s market value”. A person licensed pursuant to the Texas Appraiser Licensing and Certification Act (the “Act”) is engaged in appraisal or appraisal practice when providing an opinion of the value of real property. Under current law, a licensed appraiser must comply with USPAP when providing an evaluation. However, the same USPAP compliance requirements are not imposed upon persons and entities that are not subject to the Act, and who are providing similar services in accordance with the IAEG.

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<sup>1</sup> 12 CFR §34.43, §225.63, §323.3, §722.3 (limited to #1 and #3): 1)The transaction value is \$250,000 or less; 2)2 The transaction is a business loan that has a transaction value of \$1 million or less and is not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment; 3) The transaction involves an existing extension of credit at the lending institution, provided that there has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the institution’s real estate collateral protection after the transaction, even with the advancement of new monies; or there is no advancement of new monies, other than funds necessary to cover reasonable closing costs; and 4) (13) The transaction is a commercial real estate transaction that has a transaction value of \$500,000 or less.

The adoption of proposed § 155.3 will “level the regulatory playing field” for appraisers that are subject to the Act. In addition, the adoption of proposed § 155.3 will enhance the public trust by permitting a competent and qualified appraiser licensed pursuant to the Act to be able to provide evaluation services to federally regulated financial institutions. While not every appraiser subject to the Act will want to take advantage of the opportunity to provide evaluations to financial institutions, some will. We do not believe that those appraisers who wish to include evaluations within their portfolio of valuation services should continue to be precluded by law from being able to do so.

The promulgation of this Proposed Rule is especially important as the federal bank regulatory agencies increased the threshold below which a USPAP-compliant appraisal is not required for commercial real estate transactions to \$500,000 on April 9, 2018. The number of CRE transactions that will qualify for the use of an evaluation in lieu of an appraisal increased significantly. Real estate appraisers are competent and qualified to perform evaluation services and should not be precluded by state law from providing the same services that are currently being provided by non-licensed service providers.

### **Recommended Changes to Proposed § 155.3**

- 1) While we do not believe that the disclaimer proposed to be required in an evaluation performed by a person licensed pursuant to the Act is necessary, it is a reasonable accommodation to make it clear that a person licensed pursuant to the Act is not acting in the capacity of an appraiser, and is not subject to USPAP compliance requirements, when performing evaluations according to the IAEG. We also suggest the addition of language to the proposed rule that further clarifies that a person that is licensed pursuant to the Act is not subject to the jurisdiction of the TALCB when providing an evaluation that contains the appropriate disclaimer.
- 2) While we appreciate the Texas Appraiser Licensing and Certification Board’s (TALCB) decision to propose these rules for commercial real estate (CRE) transactions, we also support the adoption of similar rules that would permit persons licensed pursuant to the Act to perform evaluations for the other three categories of real estate related financial transactions where a USPAP compliant appraisal is not required under federal law.
- 3) We make the following suggestion for a change to the proposed definition of “commercial real estate transaction”:

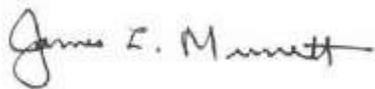
*(a) For purposes of this section "commercial real estate transaction" means a ~~federally-related transaction~~ real estate related financial transaction, as that term is defined in § 1103.204, that is engaged in, contracted for, or regulated by a federal financial institution regulatory agency, as that term is defined in § 1103.003, and that is not secured by a single 1-to-4 family residential property.*

According to both federal and state definitions, a real estate related financial transaction only rises to the level of being a “federally related transaction” if it requires the services of an appraiser.<sup>2</sup> As such, a transaction that qualifies for the use of an evaluation, in lieu of an appraisal, is not a federally related transaction because it does not require the services of an appraiser. Therefore, the CRE transactions for which a person licensed pursuant to the Act would be permitted by the proposed rule to provide evaluations are not federally-related transactions under either Texas or federal law.

We support the adoption of the proposed rule and would appreciate your consideration of our recommendations.

Thank you in advance for your consideration of the viewpoints of the AI on this important public policy matter.

Regards,

A handwritten signature in black ink that reads "James L. Murrett". The signature is written in a cursive style with a prominent initial "J".

James L. Murrett, MAI, SRA  
2018 President

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<sup>2</sup> 12 U.S.C. 3350 and V.T.C.A., Occupations Code § 1103.003 (6-a)(A)