

Government Relations Update

August 1, 2012

Appraisal Institute
Washington Office

112th Congress

- Dynamics
 - Republican controlled House; Democrat controlled Senate; Democrat controlled White House
 - 2012 Elections around the corner
 - Election jockeying ahead
 - Taxes
 - Home refinancing

112th Congress

- H.R. 3461, S. 2160, Financial Institutions Examination Fairness and Reform Act.
 - Proposal aims to promote bank examination consistency and safety and soundness
 - AI-Support measures to promote consistency, but amendments are necessary
 - Bill, as introduced, inadvertently waives the right of bank examiners to order new appraisals where there are safety and soundness concerns.
 - Examiners should not have their hands tied on S&S
 - Other issues – marking to liquidation value, evaluations
 - Bipartisan bill could lead to passage in the House.

112th Congress

- S. 3047, the Expanding Homeowners Refinancing Act (S. 3047), Sen. Diane Feinstein
 - To implement refi program for non-GSE loans through FHA
 - As introduced, S. 3047 appears to retain an FHA appraisal requirement to help establish a 140 percent loan-to-value ratio test for eligibility to the program.
 - AI – Supportive, seeking clarification

112th Congress

- S. 3085, the Responsible Homeowner Refinancing Act, to statutorily waive appraisals for GSE refinancing, encourage use of internal AVMs, and prohibit any costs from being passed onto borrowers.
 - Introduced by Senator Robert Menendez (D-NJ) and Senator Barbara Boxer (D-CA)
 - Approximately 80 percent of HARPII loans use AVM, 20 percent appraisals.
 - AI - Opposed as introduced

112th Congress

- H.R. 1755, Home Construction Lending Regulatory Improvement Act
 - Would require appraisers, lenders and examiners to use the —“as-completed” value when assessing loan collateral on projects that have reasonable prospects of reaching completion. Would prohibit use of foreclosure and distressed sales as comparables.
 - AI – opposed as introduced

112th Congress

- “SAVE” Act (S. 1737)
 - Includes provisions supported by AI addressing competency and communication
 - Ensure delivery of building information (ratings, plans and specs) to appraisers whenever possible.
 - Would also elevate appraiser qualifications to require that any real property with energy efficiency features be appraised by a State Certified appraiser who has met higher
 - AI - Supports

112th Congress



112th Congress

- S. 1232, Amending ERISA
 - To modify the definition of fiduciary under the Employee Retirement Income Security Act of 1974 to exclude appraisers of employee stock ownership plans.
 - Bill, as introduced, does not include real estate appraisers
 - AI – Support with amendment to include real estate appraisers
 - 2012 fiscal appropriations bill funding the DoL contains a provision preventing DoL from using appropriations funds to promulgate the proposed rule on the definition of “fiduciary”

112th Congress

•Farm Bill

- Farm and Ranch Lands protection Program (FRPP)
 - The oldest and most widely utilized Farm Bill program.
 - 2008 Farm Bill increased funding to this program from \$449m to \$743m.
- Also changed the valuation procedures to more closely parallel standards required by IRS.
- Funding is at risk to due to Federal budget and competition for limited funds with other major Farm Bill programs, such as nutrition and crop insurance.
- House Ag. Committee just passed version.
- House mulling 1 year extension to avoid political showdown.

112th Congress

• Highway/Transportation Bill

- “Moving Ahead for Progress in the 21st Century Act” (MAP-21), signed into law on July 6
- Contains several provisions with relevance to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act).
- While MAP-21 does not contain any appraisal specific amendments, its enactment is expected to open a rulemaking process that could touch on various real estate appraisal-related provisions found in the current regulation
- This includes provisions relating to review requirements for appraisals prepared for Uniform Act compliance.

Estate Tax

- Last Week, Senate passed S. 3412, the Democratic led Tax Bill, extending “Bush” tax cuts for those under \$250,000.
- Boost the top tax rate paid by people who inherit estates to 55 percent, exempting the first \$1 million in an estate's value.
- House GOP Bill: Keep current estate tax rate for another year.
- House Dem Bill: Increase the top estate tax rate back to 45% and lower the exemption to \$3.5 million.

Dodd-Frank

- Regulatory project list
 - Mandatory rules to be developed –
 - **“Higher risk mortgage” rules – relates to full, second appraisal requirements**
 - Appraisal Indy rules – final rule on appraisal independence, customary and reasonable fees
 - Appraisal portability
 - **Registration requirements for AMCs**
 - **AMC reporting requirements to ASC**
 - **AVM quality control standards**
 - Discretionary rules, potentially developed
 - CFPB concurrence on de minimis appraisal threshold
 - BPOs outlining when/how they are prohibited in loan origination¹³

Dodd-Frank

- Regulatory project list cont.
 - Several Asset Back Securities Rules
 - Credit Risk Retention
 - Consumer Disclosure Form
 - Proposed rule.
 - To decide whether to separate Appraisal and Appraisal Management fees
 - Interim Final Rule

Asset Backed Securities

- Securities and Exchange Commission
- ABS Review
 - Final Rule ([RIN 3235-AK76](#)) requires issuer of an ABS perform a review of the assets underlying the ABS, and disclose the nature of such review.
 - Could include a review of each original appraisal to assess whether it appeared to comply with the originator's appraisal guidelines, appropriateness of the comparables

Asset Backed Securities

- Securities and Exchange Commission
- AB Regulation, proposed in [May 2010](#)
 - Proposes to capture loan and property level (appraisal) information, eliminate references to ratings agencies
 - Rule was underway prior to Dodd-Frank and is being contemplated as part of it
 - Some overlap with Credit Risk Retention proposal

Credit Risk Retention

- “Skin in the Game” [requirements](#)
- Affects both commercial and residential mortgage backed securities
- Proposed rule requires “Qualifying Appraisals” in conformance with USPAP to qualify for exemption from the risk retention requirements
 - AI-ASFMRA [Comment letter](#)
 - Proposed a six-month shelf life for CRE appraisals
 - Combined LTV provisions – discussion of “very low cap rates”
 - Use of alternative valuations

– RESPA Disclosure

- Proposed Rule given an option to report AMC fees, but does not require it
- What does this mean?
 - No change, likely, if approved as is
 - Settlement agents take instructions from lenders
 - Very little incentive for a bank to instruct disclosure of the AMC fees, particularly any bank that owns an AMC
- Comment period runs through November and AI is preparing a response with recommendations

Interim Final Rule

- Issued by Federal Reserve in [Fall of 2010](#)
- Issued prior to the culmination of the Home Valuation Code of Conduct
- Establishes Appraisal Independence Requirements
- Customary and Reasonable Fees
 - Two Presumptions of compliance
 - Enforcement
 - CFPB and other agencies

Dept. of Labor

– Fiduciary Responsibility

- Proposed rule would define appraisers as “Fiduciaries”
- “Investment advice
- Fails to recognize diverse engagements of real estate appraisers by pension funds
 - Portfolio monitoring
 - Disposition
 - **“Independent Fiduciary”**
- AI has engaged DOL in a productive dialogue
- In Sept 2011, DOL announced it would withdraw and reissue new rule

Small Business Administration

- Going Concern Appraisals – SBA Standard Operating Procedure 50-10
 - Oct 1, 2010 policy requires 2nd business appraisal when business component is more \$250,000
 - “Qualified Sources” definition includes CPAs, ASAs, ABVs, etc.
 - SOP has been updated twice (June 1, 2012) to recognize new AI Course to perform going concern appraisals in lieu of 2nd business appraisal
 - Going concern appraisals on special purpose properties, where the BV is more than \$250,000 in contributory value, can once again be appraised by real estate appraisers who complete the new AI course.

Internal Revenue Service



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- Oversight and enforcement increasing
 - Non-cash charitable contributions
 - Qualified Appraisal and Qualified Appraiser
 - Tax Court Opinions Mixed
 - Appraisers not considered tax preparers, but they still must obtain a PTIN number if signing Form 8283

Housing Programs

- GSEs
 - Future of Fannie & Freddie
 - Uniform Appraisal Dataset
 - Foreclosures, modifications, rental housing program
 - HARP program announcement
 - Applies only to F&F loans
 - Some appraisals will be ordered when AVM not reliable
 - Reality – Doesn't move the demand curve either way
 - However, long term, this has major significance

Housing Programs

- Federal Housing Administration
 - Updated Handbook 4150.2 being updated
 - Adopted UAD
 - Geographic competency, AMC concerns
- VA
 - Has announced retained an AMC to help with processing and administration
 - Fee schedule protocols will remain the same

Housing Programs

- Multi-Family
 - AI to develop a “Primer” on affordable housing appraisals for use by state housing finance agencies, HUD, USDA, IRS
 - Recognized at White House event in July
 - HUD MAP Guide Updated, effective November 1, 2011
 - Changes can be found at <http://portal.hud.gov/hudportal/documents/huddoc?id=4430GtrnHSGG.pdf>
 - HUD Section 8 Voucher Proposed Rule-eliminates appraisal to determine initial contract rents to building owner. AI has requested provision be eliminated

Bank Regulations

- Interagency Appraisal and Evaluation Guidelines
 - Emphasizes Review, competency
 - Evaluations – BPOs do not satisfy, but can be used in developing (something more is required)
 - Cautions use of third parties
 - Concept of “collateral monitoring”
 - AVM validation

Valuation for Financial Reporting



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– Financial Accounting Standards

– FASB/IASB projects

- “Lease Accounting” (Topic 840) – Going to be re-exposed
- Investment Property (IAS 40)/Investment Property Entities (Topic 973)
- Investment Companies (Topic 946)
- Fair Value (Topic 820) and 3rd party subject matter experts
- Third party disclosures – differences between IFRS and US GAAP

– Securities and Exchange Commission

- Staff report issued outline issues with IFRS convergence
- International Accounting Standards Board has expressed disappointment

Valuation for Financial Reporting



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– FASB Investment Properties

- Fitch (From *CRE Finance*, October 26, 2011)
- *“The challenge in estimating the fair value of a generally illiquid asset class such as commercial real estate is formidable, Fitch observes. As such, the rating agency says it would have more comfort in fair value financial reporting if both the primary determinants and ranges of fair value were disclosed in the financial statement footnotes. Clear disclosures regarding the methodologies utilised in determining fair value, and the use of independent third-party accredited professionals in such determination, would also assist Fitch in understanding the derivation of fair values.”*

Industry Initiatives

– Rating Agencies & Due Diligence

- S&P CMBS Evaluation Methodology – AI Recommends use of third party due diligence firms, like RMBS

– CRE Finance Council

- CMBS 2.0
- Appraisals required, acknowledged

– CFA Institute

- Global Investment Performance Standards (GIPS 2010)
- Increasing frequency of external valuations to annually

– NCREIF/PREA

- Real Estate Information Standards (REIS)
- Same as GIPS

State Issues

- Top Issues
 - AMC Oversight
 - BPO expansion legislation
 - Distressed sales as comparables
 - “Green” valuation
 - State oversight and Enforcement
 - Reciprocity / Streamlining Licensure
 - Codification of APB “Voluntary Guidance”

State Issues

Recent Successes

Led efforts to enact 33 AMC registration bills in less than three years

- Developed model bill

- Supported efforts made by chapters/coalitions

- Helped CT chapter to defeat BPO expansion bill

- Favorably amended BPO expansion bills in MS, NC

- Defeated bills regarding use of comps in 4 states

- Defeated bills that would have imposed “green” education requirements on appraisers (NV, VA, WA)

State AMC Legislation

- To date, 33 states have enacted laws to bring AMCs under the regulatory authority of state appraiser board
 - 5 in 2012 - CO, KS, NH, PA, VA
 - Ongoing Issues
 - Bonding
 - C&R
 - AMCs and Appraisal Firms
 - Appraisal Reviews
 - Compliance costs

State AMC Legislation

- Several other state are currently considering AMC legislation
 - MA, MI, NJ, OH, and SC
- Several other states to consider AMC legislation in 2013
 - AK, ID, WI, WV, and WY
- Some “perfecting” legislation is likely to correct flaws in existing AMC laws
 - AZ, LA, MO, WA

State AMC Regulations



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- Implementing regulations are also very important
- Rulemaking process underway in FL, IL, NH, KS, TX, OR, UT, et. al.
- Variety of issues being clarified
 - Registration fees, surety bond amounts, definitions, application processes, background checks, etc.

State AMC Legislation

- New issue in '11/'12 – appraiser non-payment by AMCs
- Some states require AMCs to post bonds, but often the value of the bonds is small or don't protect appraisers
- Some question as to whether lenders are responsible for AMC non-payment
- Some states looking at higher bond amounts (i.e., 1.5 x payments)
- Appraiser options may be limited

BPOs

- Broker Price Opinions
 - Proliferation in the use of BPOs as valuation tools for foreclosures, short sales, loan modifications, portfolio valuation
 - Our analysis - In at least 16 states, the ability of a broker or salesperson to perform a BPO may be limited to the real estate listing or purchase process
 - Not illegal to order a BPO, but it may be illegal for the broker to complete the assignment

- 2012 Developments
 - Expansion legislation defeated in CT; enacted in NC and WY
 - Bad NC law includes favorable “amendments”:
 - Clarification that dually licensed appraisers can do evaluations;
 - State board cannot take action against an appraiser for Scope of Work

BPOs

- There is a coordinated, national campaign to expand the ability of a real estate professional to do a BPO outside of the real estate listing process, including to loan origination
- Proponents argue need for portfolio valuation, short sales, foreclosures, etc.
- Chapter needs to remain vigilant for any proposed legislation/regulation on this topic

- Strategies

- Defeating BPO bills outright is extremely difficult in the face of Realtors®, bankers, and REVAA
- Best course of action may be to amend to make more palatable
 - Limit to residential
 - Reference only to price, and not value
 - BPO Standards & Guidelines
 - E & O insurance
 - Education requirements
 - Never to be used in loan origination
 - Clarify ability of appraisers to perform

- Arguments in opposition to legislation:
 - Now is not the time to loosen collateral valuation stds.
 - BPOs are largely unregulated and are performed with little oversight and training
 - There are no USPAP-like enforceable standards for BPOs
 - Agent/broker conflict of interest concerns – “flopping”
 - An agent/broker’s E & O insurance may not cover BPOs

BPOs

- Likely to see additional legislation regarding BPOs in 2013
- AI Chapters must remain vigilant and prepared to respond to any threats

Distressed Sales

- Legislation in IL, MD, MO and NV would have prohibited the use of distressed sales as comps.
 - Put forth by home builders and brokers
 - All defeated
- Conflict with USPAP “must analyze” which is *de facto* federal law; no pre-emption by states
- Potential to through mortgage markets into turmoil; possible ASC decertification
- Artificial inflation of values
- Policymakers “get it” when educated

Reciprocity/Licensing

- Appraisers continue to have difficulty in obtaining credentials (reciprocity or temporary practice) outside of their domicile
- Dodd-Frank Act contains a requirement for state to have a policy regarding reciprocity
 - AQB compliant “sending” state with requirements that meet or exceed those of the “receiving” state
 - ASC policy that states can require appraisers to satisfy additional requirements
 - E.g., KY req. for certain % of reports using each approach

Reciprocity/Licensing

- Need for a streamlined credentialing process that allows appraiser to easily obtain credentials in multiple states
- Referenced in July, 2012 Congressional testimony
- Likely to see federal legislation in this area in 2013

Green Valuation

- Legislation in NV, VA, WA to require appraisers to take minimum # of hours of QE/CE in green valuation topics - defeated
- Our position is that it is overly prescriptive
- Not all RE appraisers need green val. Training; repetitive
- Clients should seek out appraisers who are qualified & competent in green val. for these types of assignments

Appraisal Practices Board

- TAF-APB is developing “voluntary guidance,” but at the same time promoting codification
- Some states (DC, MD, MT, NE, NJ, UT, WY) already incorporate all aspects of USPAP (AOs, FAQs, etc.) into their law
- If misused, could hamstring appraisal process, innovation within the industry

Board Funding

- Ensure that boards have adequate resources for administration and enforcement
- Prevent sweeping of funds into general fund
- Enacted in Maryland in '11 as part of AMC legislation
- ASC in the process of developing rules for grants to states; proposed rules expected in early '13

FDIC Lawsuits

- On May 9, 2011, the FDIC filed a lawsuit in U.S. District Court (C.D. Cal.) against CoreLogic and various affiliated companies including CoreLogic Valuation Services, LLC, f/k/a eAppraiseIT, LLC ("eAppraiseIT").
 - In its complaint, the FDIC alleges that eAppraiseIT supplied potentially thousands of improper appraisals and that eAppraiseIT was grossly negligent in the provision of appraisal services in 2006 and 2007.
 - According to the complaint, the FDIC has sampled 259 appraisals out of the thousands at issue and alleges that 194 (or 75%) of them "contain multiple egregious violations of USPAP." Source: *Appraiser Law Blog*

FDIC Lawsuits

- The FDIC also sued LSI Appraisal, its parent corporation Lender Processing Services and various of their affiliates in the same U.S. District Court. This lawsuit also concerns appraisals delivered to or managed for WaMu during the same period.
 - In this lawsuit, the FDIC seeks approximately \$154 million in damages, but these alleged damages only relate to 220 specific appraisals or review appraisals supplied by LSI between June 2006 and May 2008 -- the FDIC says it has only sampled 292 so far (of course, the ones sampled would only be for loans that have defaulted).
 - The FDIC suggests in its complaint that there could be thousands more appraisals at issue. Indeed, the FDIC alleges that LSI supplied or managed more than 386,000 appraisals for WaMu during the relevant time period. Source: *Appraiser Law Blog*

FHFA Lawsuits

- Filed against 17 financial institutions, certain of their officers and various unaffiliated lead underwriters.
 - Suits allege violations of federal securities laws and law in the sale of residential private-label mortgage-backed securities to Fannie & Freddie
 - All 17 complaints involve appraisal misrepresentation
 - Months, years of legal jockeying ahead

Suggestions

- Stay abreast and involved!
- Talk with your clients!
- Work with clients who want your expertise and analysis!
- Diversify skill set and practice!
- Continue to do professional, solid work

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