

MEMORANDUM

To: Members of the Committee on Financial Services

From: FSC Majority Staff

Date: November 10, 2016

Subject: November, 16, 2016, Housing and Insurance Subcommittee Hearing on “Modernizing Appraisals: A Regulatory Review and the Future of the Industry”

The Subcommittee on Housing and Insurance will hold a hearing entitled “Modernizing Appraisals: A Regulatory Review and the Future of the Industry” at 10:00 a.m. on Wednesday, November 16, 2016, in Room 2128 of the Rayburn House Office Building. This hearing will examine the appraisal industry since the creation of the Appraisal Subcommittee in 1989, review the Dodd-Frank Act’s impact on appraisers, consumers and stakeholders, and explore the future of appraisals, including alternative home valuation methods.

This will be a one-panel hearing with the following witnesses:

- Mr. James R. Park, Executive Director, Appraisal Subcommittee
- Mr. David S. Bunton, President, The Appraisal Foundation
- Ms. Joan N. Trice, Chief Executive Officer and Founder, Clearbox
- Mr. Bill Garber, Director of Government and External Relations, Appraisal Institute
- Mr. Ed Brady, Chairman of the Board, National Association of Home Builders
- Ms. Jennifer S. Wagner, Managing Attorney, Mountain State Justice, Inc.

Background

An appraisal provides the estimated value of real estate prior to the completion of a property sale or refinancing and is often required by lenders because the property serves as collateral for the loan. The savings and loan crisis of the late 1980’s and early ‘90’s, and the subprime mortgage crisis of the late 2000’s, raised questions about the appraisal industry’s integrity and prompted congressional reforms.

While appraisals are largely regulated by the states – which have established agencies that license and certify individual appraisers – Congress enacted the Financial

Institutions Reform, Recovery, and Enforcement Act (FIRREA) in 1989, which established the Appraisal Subcommittee (ASC) as a federal watchdog over the appraisal industry. The ASC is part of the Federal Financial Institutions Examination Council, which is comprised of federal and state banking regulators and is charged with promoting uniformity in financial institution supervision.¹ Title XI of FIRREA requires an appraisal for all Federally Related Transactions (FRTs), which must be conducted by a licensed or certified appraiser adhering to a set of uniform standards.

In 2010, Congress expanded the federal government's role in appraisal oversight with the enactment of the Dodd-Frank Act, which set new requirements for individual appraisers, appraisals, and Appraisal Management Companies (AMCs). Dodd-Frank also transferred regulatory authority from banking regulators to the Consumer Financial Protection Bureau (CFPB) for consumer-related issues.

The Role of the Appraisal Subcommittee

Title XI of FIRREA established the ASC to “ensure that Federal financial and public policy interests in real estate transactions will be protected.”² When it was created in 1989, the ASC was granted a \$5 million advance from Treasury to set up operations but has since remained self-supporting through annual fees collected by state appraiser regulatory programs. The ASC's chief role is overseeing the state codes of professional responsibility for real estate appraisers, state registration and supervision of AMCs, and standards for Federally Related Transactions. Every year, the ASC reviews about half of the state appraisal regulatory agencies and assesses them as being Excellent, Good, Needs Improvement, Not Satisfactory, or Poor. The ASC has the authority to issue interim sanctions or suspensions of state agencies if they are non-compliant. Additionally, the ASC is tasked with maintaining the National Registry of Real Estate Appraisers which enables users to check the status of appraisers' credentials (which could be active or inactive), and whether an appraiser has been subjected to suspension or other enforcement action. In addition to its oversight role, the ASC is authorized to award annual grants to the Appraisal Foundation (TAF) to defray costs of its responsibilities under Title XI of FIRREA.

The Appraisal Foundation

TAF was created in 1987 by leading appraisal organizations to provide standards and qualifications for real estate appraisers through the Uniform Standards of Professional

¹ Each state agency and the heads of the Federal Housing Finance Agency (FHFA) and the Consumer Financial Protection Bureau (CFPB) appoint a member to the ASC's board.

² The Appraisal Foundation, Appraisal Subcommittee, Association of Appraisal Regulatory Officials, “The Appraiser Regulatory System in the United States: A Unique Partnership 25 Years in the Making”, October 21, 2016.

Appraisal Practice (USPAP). In 1989, Congress authorized TAF, through FIRREA, to be the primary standard setting body tasked with setting these uniform standards and qualifications through the work of two congressionally authorized independent boards: The Appraisal Standards Board (ASB) and the Appraiser Qualifications Board (AQB). TAF, under the supervision of the ASC, has no regulatory or enforcement authority but is authorized to monitor appraisal qualifications and standards.

While TAF lacks certain authorities, the ASB does promulgate and update best practices codified in the USPAP, which are congressionally authorized standards for real estate appraisers, vetted through a public process, and updated every two years. All 50 states and territorial jurisdictions have adopted USPAP and compliance is required for all state licensed and certified appraisers involved in Federally Related Transactions.

The AQB establishes minimum qualification criteria for state credentialing of real estate appraisers through its “Real Property Appraiser Qualification Criteria.” The AQB develops certification examinations and educational tools used by all state and territorial jurisdictions.

A third independent board, the Appraisal Practices Board (APB), is not congressionally authorized but is housed in TAF to provide voluntary guidance on valuation methods and techniques through “Valuation Advisories” for appraisers and users of appraisal services.

The Dodd-Frank Act

The 2010 enactment of the Dodd-Frank Act changed the appraisal industry by amending FIRREA’s appraiser independence standards, requiring an appraiser to visit properties associated with high-risk loans, creating rules for customary and reasonable fees, establishing standards for appraiser education and AMCs, and requiring a mandatory report by the ASC on its activities.³ The Dodd-Frank Act also made individuals appointed by the CFPB and Federal Housing Finance Agency members of the ASC.

The Home Valuation Code of Conduct (HVCC) became an industry standard for appraisals following the subprime mortgage crisis through an out-of-court settlement between Fannie Mae, Freddie Mac, and the New York Attorney General. While the Dodd-Frank Act eliminated the HVCC, its main principle – separation between a bank’s loan staff and its staff selecting the appraiser – remained. In December 2010, banking regulators issued the Financial Institution Letter (FIL), “Interagency Appraisal and Evaluation Guidelines,” which applies to members of the FFEIC. The FIL codifies the

³ Edward V. Murphey, “Regulation of Real Estate Appraisers”, Congressional Research Service Report RS22953, June 26, 2012, available at: <http://www.crs.gov/reports/pdf/RS22953>.

HVCC's appraiser independence standard by prohibiting lenders from accepting appraisals if the borrower or loan staff selected the appraiser. The FIL also prohibits lenders from relying on automated valuation models (AVMs) and/or a broker price opinion (BPO) in lieu of an appraisal for transactions requiring an appraisal.

The Dodd-Frank Act granted the CFPB and banking regulators joint-authority over rulemaking for appraisals of residential property. The TILA-RESPA Integrated Disclosure (TRID) rule, which caps appraiser fees and requires appraisals to be conducted within a specific time frame, was promulgated under this authority.

In July 2011, the Federal Housing Administration (FHA) issued a rule updating the Housing and Economic Recovery Act of 2008 (HERA). HERA previously required that appraisers be "certified" (a higher credential than "licensed") for FHA loans. FHA's rule provided that only certified appraisers listed on HUD's FHA Appraiser Roster may perform appraisals for FHA loans. Under the rule, such individuals may not be on the General Services Administration's Suspension and Debarment List, on HUD's Limited Denial of Participation list, or in HUD's Credit Alert Interactive Voice Response System. Other federal agencies that issue or back loans, such as the Veterans Administration, have since adopted the FHA's standard requiring "certified" appraisers.