



February 1, 2012

The Honorable Shelley Moore Capito  
Chairman  
Subcommittee on Financial Institutions and  
Consumer Credit  
2443 Rayburn House Office Building  
Washington, DC 20515

The Honorable Carolyn Maloney  
Ranking Member  
Subcommittee on Financial Institutions and  
Consumer Credit  
2332 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Capito and Ranking Member Maloney,

On behalf of the 25,000 members of our professional organizations, thank you for the opportunity to submit a statement for the record, and share the perspective of the real estate appraisal profession on H.R. 3461, the Financial Institutions Examination Fairness and Reform Act. Our organizations support the goals of H.R. 3461, namely promoting consistency of bank examinations and due process, and we are supportive of any efforts that would enhance consistency in the interpretation and understanding of the guidelines and regulations.

Within the realm of appraisal, bank appraisal departments and appraisers themselves have often faced inconsistent interpretations of the *Interagency Appraisal and Evaluation Guidelines* and other applicable guidelines, such as the *Policy Statement on Prudent Commercial Real Estate Loan Workouts*. For instance, the area of "subsequent transactions" (modifications, refinancings, etc.) is confusing and has seen inconsistent statements from the regulators, some contending that an appraisal is required when there is a material change in market conditions, when the Guidelines themselves determine something different<sup>1</sup>. The addition of an ombudsman may be helpful to addressing some of these concerns. We also support due process and an administrative appeals program in connection with disputes regarding valuation or appraisal methodology.

While we support the overall goals of H.R. 3461, one area of concern relates to Sec. 1013(a)(3) of the legislation, which we fear will unnecessarily tie the hands of bank examiners in protecting safety and soundness. Specifically, Sec. 1013(a)(3) is inconsistent with *Real Estate Lending* regulations, the *Interagency Appraisal and Evaluation Guidelines*, and the *Policy Statement on Prudent Commercial Real Estate Loan Workouts* as introduced in that it would prohibit any reappraisal of a performing loan *even if* examiners identified safety and soundness concerns. We do not believe that federal bank examiners should have their "hands tied" on issues of fundamental importance to safety and soundness.

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<sup>1</sup> According to a 2008 presentation by a Federal Reserve official, "*A subsequent transaction (even with the advancement of new monies) may be exempted from the appraisal requirement, but a bank must obtain or perform an evaluation. If there has been obvious and material changes in market conditions or physical aspects of the property that threaten the adequacy of the bank's collateral protection, the transaction does not qualify for exemption and the bank must obtain an appraisal.*" See Slide 16 at <http://www.fdic.gov/regulations/resources/minority/events/interagency/presentations08/Siddique.pdf> The 2010 Interagency Appraisal and Evaluation Guidelines state: *A subsequent transaction is exempt from the appraisal requirement if no new monies are advanced (other than funds necessary to cover reasonable closing costs) even when there has been an obvious and material change in market conditions or the physical aspects of the property that threatens the adequacy of the institution's real estate collateral protection.* See Page 46 at <http://www.ncua.gov/News/Press/NW20101202InteragencyAppraisal.pdf>

In our view, Sec. 1013(a)(3) may not be necessary because current regulations and guidance do not require reappraisal of performing loans. Under the regulations, outside of the safety and soundness trigger, a new appraisal is not required for a loan workout or refinance unless there are new monies involved **and** there has been a material change in market conditions or the physical aspects of the property. Otherwise, an "evaluation" is acceptable. In this regard, including Sec. 1013(a)(c) may confuse a matter that is already settled through existing regulations.

#### Consistent Value Definitions

One set of issues that deserves consideration within the context of the bill are definitions of value used by federal bank regulatory agencies. We believe examinations would be made more consistent through the establishment of clear value definitions. Specifically, bank risk assessment of troubled loans would be enhanced greatly by obtaining both *Market Value* and *Liquidation Value* under commonly accepted definitions. A definition of *Disposition Value* may also be beneficial, as appraisals are commonly ordered with two or more values, and there are distinct definitions for all three.

While Market Value is essential to understand the position of the credit, Liquidation Value can enhance the decision making of banks during loan workouts by establishing worst case scenarios for the bank. This is essential to making determinations on whether it is better to foreclose on the property or conduct a loan workout. Such appraisal assignments are common today, but not recognized in regulations. Yet, if a bank orders a valuation product with such a value as part of the scope of work, our members have reported that examiners have demanded it be used in lieu of Market Value.

Such demands are not appropriate and lead to unnecessary write downs of loans. A clarifying amendment defining the appropriate use of Liquidation Value and prohibition against using it to classify the loan would help improve overall bank risk management activities.

#### Definition of Performing Loan

An additional recommendation that would help enhance consistency in regulations, and protect safety and soundness, would be to define "Performing loan", as it is not currently defined in regulation or guidance. The Policy Statement on Prudent Commercial Real Estate Loan Workouts makes clear that loans should be based on "reasonable terms." As such, we suggest the following definition:

*For the purposes of this subsection, all performing commercial loans shall be based on reasonable loan terms and the cash flow potential of the underlying collateral or business and be paying as agreed to those under contract.*

Thank you for the opportunity to speak on the record, and we look forward to working with you on passage of H.R. 3461.

Sincerely,

Appraisal Institute  
American Society of Farm Managers and Rural Appraisers