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March 13, 2003

The Honorable Judy Biggert  
United States House of Representatives  
1213 Longworth House Office Building  
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Dear Representative Biggert:

We were recently alerted to legislation you and eight of your colleagues introduced on September 25, 2002 entitled the Judicial Code of Conduct Privacy Clarification Act, H.R. 5457. This legislation would amend the Gramm-Leach-Bliley Act (GLB) by exempting attorneys from privacy provisions of the Act.

As we understand it, this legislation was introduced because the Federal Trade Commission (FTC), when promulgating regulations implementing the GLB, misinterpreted Title V of GLB to include the practice of law. Under these regulations, law firms and sole practitioners "significantly engaged in financial activities" are considered "financial institutions" and are therefore subject to the requirements of the GLB. In essence, inclusion of the legal profession is inappropriate because: 1) attorneys are already bound by a duty of confidentiality; 2) federal enforcement of this regulation would infringe upon the attorney-client relationship; 3) these rules would confuse clients and the public, and 4) these rules would create an undue burden upon firms of all sizes, particularly upon sole practitioners.

We agree with the position taken in this legislation. However, H.R. 5457 fails to address the overriding issue brought forth by the FTC regulation – that the definition of "financial institution" used by the FTC was broader than what Congress intended. As a result, other professionals, including real estate appraisers, have been inappropriately subject to the Act's privacy requirements, even though most practitioners abide by standards of conduct relative to issues of confidentiality.

Following the release of the FTC Final Rule on the Confidentiality of Personal Financial Information in May 2000, the Appraisal Institute provided its members with a summary of the Final Rule with a description of the requirements set forth by the Rule. Our members expressed a great deal of frustration and confusion over the FTC Rule and the requirements it placed on real estate appraisers, so a two-hour seminar was delivered to over 70 chapters of the Appraisal Institute summarizing GLB and the FTC Rule's requirements. The feedback from our members was clear – they felt the FTC definition of financial institution was too broad and should not have included real estate appraisers. They also felt the Rule placed an undue burden on real estate appraisers and that this rule could cause a great deal of confusion for clients of appraisal services.

It should be pointed out that just as attorneys have a Judicial Code of Conduct stipulating they must abide by confidentiality standards with their clients, real estate appraisers must abide by the "Ethics Rule" of the *Uniform Standards of Professional Appraisal Practice (USPAP)*. USPAP, promulgated

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by The Appraisal Foundation, which is charged by Congress to establish rules for developing an appraisal and reporting its results, contains the recognized standards of practice for real estate, personal property and business appraisal. More than 80,000 state certified and licensed appraisers are currently required to adhere to USPAP.

The Ethics Rule of USPAP is divided into four sections: Conduct, Management, *Confidentiality* and Record Keeping. The Confidentiality section of USPAP states the following:

“An appraiser must protect the confidential nature of the appraiser-client relationship.

An appraiser must act in good faith with regard to the legitimate interests of the client in the use of confidential information and in the communication of assignment results.

An appraiser must be aware of, and comply with, all confidential and privacy laws and regulations applicable in an assignment.

An appraiser must not disclose confidential information or assignment results prepared for a client to anyone other than the client and persons specifically authorized by the client; state enforcement agencies and such third parties as may be authorized by due process of law; and a duly authorized professional peer review committee except when such disclosure to a committee would violate applicable law or regulation. It is unethical for a member of a duly authorized professional peer review committee to disclose confidential information presented to the committee.”

The purpose of the Ethics Rule is to promote and preserve the public trust inherent in professional appraisal practice. Failure to comply with the Ethics Rule may result in license suspension or revocation and monetary penalties by the state appraiser licensing board and/or revocation of their designation by a professional appraisal society.

Since passage of the GLB in 1999, many states have sought to enact laws protecting the privacy of their citizens. We would like to bring to your attention language contained in California Senate Bill 773, which was recently considered by the California Legislature. This legislation would require financial institutions to obtain the permission of the consumer before the financial institution could share the confidential consumer information with nonaffiliated companies (“opt in”).

Although the legislation did not pass the California Legislature this year, we believe it offers a possible solution to address the issue of the FTC using an overly-broad definition of a financial institution. The final version of the CA SB 773 would have exempted confidential consumer information that is released to a real estate appraiser licensed or certified by the state of California for submission to central data repositories such as the California Market Data Cooperative, and when the confidential consumer information is compiled strictly to complete other real estate appraisals and is not used for any other purpose.

In addition, CA SB 773 would also have recognized that many professional service providers already abide by standards such as USPAP the Judicial Code of Conduct. The legislation states:

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“The term "financial institution" does not include any provider of professional services, or any wholly owned affiliate thereof, that is prohibited by rules of professional ethics or applicable law from voluntarily disclosing confidential client information without the consent of the client.”

Another concern we have relates to the appraiser’s responsibility to the public good. If the FTC mandate is allowed to go unchecked, real estate appraisers will have a difficult time performing appraisals. In order to perform accurate appraisal assignments, an appraiser must have access to reliable lease, expense and comparable sales information. The GLB privacy provisions were intended to address personally identifiable financial information. However, many data points used by appraisers that are property-specific may be construed as personally identifiable. If property-related data are restricted or barred entirely from use by appraisers, inaccurate appraisals may result – the effects of which may have a significant impact on real estate markets. This harms the public because they will be basing their decisions on appraisal data that does not provide them sufficient or accurate information.

In light of this information, we ask you to consider revising the Judicial Code of Conduct Privacy Clarification Act to include language similar to CA SB 773, which recognizes that many professional service providers now under the purview of the FTC have rules, professional ethics or applicable law governing the disclosure of confidential client information. These issues not only impact attorneys, but numerous other professionals, including real estate appraisers, throughout the country.

We look forward to working with you on this issue the remainder of this year and during the 108<sup>th</sup> Congress. Should you have any questions, please contact Donald E. Kelly, Vice President of Public Affairs, Appraisal Institute at 202-298-5583 or [dkelly@appraisalinstitute.org](mailto:dkelly@appraisalinstitute.org) and Edwin W. Baker, Executive Vice President, American Society of Appraisers at 703-733-2109 or [tbaker@appraisers.org](mailto:tbaker@appraisers.org).

Sincerely,



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President  
Appraisal Institute



John J. Connolly III, ASA  
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Representative Paul Gilmore  
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Representative Michael Oxley  
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