June 13, 2016

Rep. Blaine Luetkemeyer, Chairman
Rep. Emanuel Cleaver, Ranking Member
Housing and Insurance Subcommittee, House Financial Services Committee
2129 Rayburn House Office Building
Washington, DC 20515

Re: Comments on FRT Issue

Chairman Luetkemeyer and Ranking Member Cleaver:

The undersigned professional appraisal organizations are writing to express deep concern for what we believe is an existential threat to the national appraisal regulatory system established over a quarter century ago by Title XI of FIRREA. The source of this threat is the FDIC (and, possibly, the other federal bank regulatory agencies), which believes, erroneously, that it has the statutory power to exclude the vast majority (85-90%) of real estate related financial transactions in which the government has a safety and soundness and/or a consumer protection responsibility from the appraisal reform law. Under the FDIC’s mistaken interpretation Title XI does not apply to the billions of dollars in mortgages guaranteed by FHA, VA and USDA’s rural housing program; the mortgages sold to and packaged into mortgage backed securities by Fannie Mae and Freddie Mac; and, even all mortgage originations eligible for sale to the GSEs. Unless stopped, the FDIC and the other banking agencies are close to achieving an effective repeal of Title XI, not by Congress but by unilateral administrative fiat.

Professional appraisals of the value of properties collateralizing mortgage loans are indispensable to safe and sound loan underwriting and to ensure consumer protections for borrowers. The attached “White Paper” describes the devastating impact of the FDIC’s actions on the housing and mortgage markets and explains the bases for our belief that the bank regulatory agency is acting well beyond its authority and contrary to the public interest.

A representative of the FDIC recently told a conference of state appraiser regulatory agency officials that contrary to the belief they and all other Title XI stakeholders in government and in the private sector have held for 25 years, the law only applies to a very narrow slice of real estate related financial transactions – about 10 – 14%. They were also told that if the banking agencies are successful in further increasing the dollar threshold under which appraisals are not required in federally related transactions, only about 4% of all such transactions would be covered by the appraisal law. The banking agencies’ interpretation of Title XI and their objective to undermine it, are contrary to the clear intent of Congress when the law was enacted and contrary to the understanding and the practices of all Title XI stakeholders for decades.
The threat of the banking agencies’ actions cannot be overstated. Unless successfully challenged, Title XI will be effectively repealed. This outcome would mark a return to the mortgage market environment of the pre-FIRREA 1980s, where appraisal practice was unregulated and where faulty and fraudulent appraisals added billions of dollars to the catastrophic losses suffered by the thrift deposit insurance fund – the very outcome Congress determined to prevent from recurring by passing FIRREA in the first place. It would also represent a kind of banking agency regulatory amnesia with respect to the collapse of the mortgage and housing markets of not very many years ago.

We respectfully request that you review the attached White Paper and one page summary which explain our concerns and the numerous arguments against what the banking agencies are trying to accomplish. Without swift and decisive action from Congress, the banking agencies themselves, or the myriad agencies that rely on Title XI, it is highly likely that the regulatory structure that has been relied upon for over a quarter century will stunningly collapse, leaving a vacuum in its absence. This outcome simply cannot be allowed to happen.

If you have any questions regarding our views, please contact either Peter Barash, Government Relations Consultant to ASA and NAIFA, at 202-466-2221 or peter@barshassociates.com, or John D. Russell, JD, Director of Government Relations for ASA, at 703-733-2013 or jrussell@appraisers.org.

Sincerely,
ASA
NAIFA