December 1, 2015

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
Mail Stop 9W-11, 400 7th Street, SW
Washington, DC 20219

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Federal Deposit Insurance Corporation
550 17th Street. NW
Washington, DC 20429

Re: Banking Agencies' Review Pursuant to EGRPRA

Dear Sir or Madam:

The undersigned professional appraisal organizations, representing thousands of professionally credentialed appraisers in the U.S. appreciate the opportunity to comment on the federal banking agencies' review of their regulations pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA).[1] Our comments are focused on rules under review governing real estate appraisals in federally-related transactions (identified in the "Safety and Soundness" subject matter category, item 11).

The Agencies have held a series of meetings across the country to solicit the views of the public and of stakeholders in the bank regulatory system for the purpose of identifying regulations believed to be outdated, unnecessary or unduly burdensome. Once so identified, the Agencies may undertake the elimination of, or changes to, such regulations either under their existing authority or, when laws need to be amended or repealed, based on statutory changes by Congress.

In testimony before the Senate Committee on Banking, Housing and Urban Affairs on February 10, 2015, the FDIC testified that one of the emerging themes of the EGRPRA review involved "looking at whether laws and regulations based on long-standing thresholds should be changed – for example, dollar thresholds requiring an appraisal or a currency transaction report."[2] Our review of the written comments submitted thus far to the Agencies on the EGRPRA review process, found only one letter, from a trade association,[3] supporting an increase in the dollar threshold triggering the appraisal requirement for valuing collateralized 1-4 family residential loans. Under the Agencies' existing safety and soundness regulations and policies, loans collateralized by residential real estate with a transaction value of more than $250,000 generally require that the collateral be

[1] Each of our organizations teaches, tests and credentials its members for professional appraisal practice and appraisal review in the area of commercial and residential real property valuation. Additionally, the American Society of Appraisers (ASA) is a multi-disciplinary appraisal organization that teaches, tests and credentials its members for professional appraisal practice in business valuation and in personal property valuation (including fine arts, machinery and technical specialties and other categories of tangible and intangible property).
[2] Testimony delivered by the FDIC's Director of the Division of Risk Management Supervision.
[3] Letter from the Independent Community Bankers of America.

valued by a state certified or state licensed appraiser in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP).

I. Overview

The Agencies appear to be interested in considering an increase in the threshold triggering the appraisal requirement (some have suggested an increase to $500,000) and whether an increase would be consistent with the Agencies responsibility to ensure the safety and soundness of collateralized mortgage transactions and protecting the consumer interests of home borrowers. Our organizations strongly oppose any increase, a position we believe is shared by many other stakeholders in the housing and mortgage markets. Indeed, we believe the Agencies should revisit and reverse an ill-advised decision they made years ago to increase the threshold from $100,000 to $250,000.[4]

For the specific reasons set forth below, we believe an increase in the appraisal threshold for residential loan transactions (or for commercial lending) would severely jeopardize safety and soundness and seriously weaken consumer protections for borrowers. Such a decision would represent an unthinkable return to the weak regulations governing appraisals in federally-related transactions during the 1980s, a weakness which Congress and the GAO found added billions of dollars to federal deposit insurance losses resulting from the S&L crisis. A threshold increase would also ignore the lessons governmental decision-makers should have learned from the recent and devastating collapse of the housing and mortgage markets which inflicted multi-billion dollar losses on homeowners, builders, Realtors, mortgage market investors, deposit insurance funds and government entities. There is no case to be made on the public policy merits for increasing the appraisal threshold level. To the contrary, there is a strong case to be made for substantially reducing the existing threshold.

II. Executive Summary of Our Views

(A) Increasing the appraisal threshold for residential transactions beyond its current $250,000 level is unacceptable as a matter of sound public policy for many reasons: it would undermine mortgage lending safety and soundness for the vast majority of mortgage transactions; it would greatly diminish consumer protections for millions of consumers financing a home purchase; and, as a direct consequence of mortgage lenders being able to utilize lower-priced evaluations for a larger portion of their loans, it would discourage entrants into the appraisal profession and precipitate substantial shortages of professional appraisers going forward;

(B) When Congress gave the Agencies authority in Title XI to adjust the appraisal threshold levels, it did not grant them the power to effectively repeal the law. Given the fact that more than 70% of all residential mortgage transactions are exempt from the Agencies' appraisal requirements under the existing $250,000 threshold, any increase would be tantamount to an Executive Branch repeal of Title XI of FIRREA as it pertains to residential lending – an outcome that would violate the clear intent of Congress in enacting Title XI.

(C) (1) Evaluations, when <u>not</u> performed by a state certified or licensed appraiser, are a flawed and unreliable indicator of the market value of property collateralizing mortgage loans. While we acknowledge the Agencies' good faith attempt to establish guidelines for the

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[4] After Title XI was enacted in 1989, the threshold for residential lending was raised by the banking agencies from $50,000 to $100,000 and then to $250,000 where it currently stands.

performance of evaluations that provide some degree of assurance that they will be reliable, an examination of those policies demonstrate that they fall far short of what is required to create that likelihood. A wide and unacceptable gulf exists between appraisals and evaluations with respect to ensuring that valuation of residential property collateralizing mortgage loans protect safety and soundness and promote consumer protection for homebuyers.

(2) When evaluations are performed by certified or licensed appraisers, they are considered to be "appraisals" by the Appraisal Standards Board and by State appraiser regulatory authorities. Certified or licensed appraisers performing evaluations are held to the same high standards of competency and ethics that govern appraisals and are subject to fines or loss of license for any act or practice which violates the Uniform Standards of Professional Appraisal Practice (USPAP). As a consequence, appraisers performing evaluations should be compensated in an amount that fully complies with the "customary and reasonable" appraisal fee requirements of Dodd-Frank;

(D) We urge the Agencies not to undertake any administrative action to increase the appraisal threshold until (1) the Consumer Financial Protection Bureau initiates and completes a review of the effects of an increase on consumer protection and (2) the Bureau concurs in writing that the proposed higher threshold level "provides reasonable protection for consumers who purchase 1–4 unit single-family residences" – as the Dodd-Frank law requires.[5] The CFPB has advised representatives of our organizations that any proposed increase in the threshold beyond its current $250,000 level would trigger the Bureau's threshold review mandate under Dodd-Frank and would require its concurrence. We believe that any action by the Agencies to increase the threshold without the concurrence of the CFPB would violate the law. Our organizations are sending a letter to CFPB director Richard Cordray urging him to initiate the review required by Dodd-Frank in the event the Agencies take action to increase the current threshold.

(E) Our organizations reject the view advanced by some that the weaknesses inherent in the Agencies' existing residential loan threshold of $250,000 are inconsequential because they are neutralized by the more robust appraisal requirements of the GSEs and FHA. We believe the time is long past due for the Agencies to take full responsibility for ensuring that their appraisal requirements effectively protect safety and soundness and promote consumer protection for all home loan transactions and all borrowers; and not rely on the policies of other federal entities to fill the safety and soundness and consumer protection void the current threshold has created.

III. Discussion

(A) Increasing the appraisal threshold for residential transactions beyond its current $250,000 level would be unwise and unacceptable as a matter of sound public policy:

Title XI of FIRREA – which established the appraiser certification and licensing system for federally-related transactions in 1989 - is working well. It ensures the valuation competency and ethical independence of individuals who value properties collateralizing residential mortgage loans; and, the state appraisal boards which test, license and oversee them, hold appraisers accountable for the quality of their work. Reliable appraisals of the market value of collateral properties are as essential to the integrity of the mortgage lending system as the creditworthiness of borrowers

[5] Dodd-Frank Act, Section 1473(a).

(while the market value of collateral residential property can change during the term of the loan, so can and does the creditworthiness of borrowers).

Since enactment of Title XI in 1989, the GAO has issued dozens of reports examining its implementation and effectiveness in assuring the quality and reliability of collateral valuations in connection with federally-related transactions. We believe it can accurately be stated that while GAO has criticized certain aspects of the law's implementation and administration, it has generally found that it is working effectively to ensure safety and soundness and to protect the consumer interests of homebuyers. In its most recent reports on Title XI, GAO concluded that most housing and mortgage sector stakeholders believe that appraisals are the surest way to ensure the reliability of collateral valuations.[6]

It is also important to understand that because of the low fees paid to those performing evaluations, an increase in the threshold and the resulting greater reliance on them by mortgage lenders will not only weaken safety and soundness and consumer protections, it will lead to a sharp decline in the numbers of those entering the appraisal profession – a result that would defeat the efforts of our organizations, the Appraisal Foundation, the American Bankers Association and others to adjust appraiser qualifications requirements to increase the numbers of professional appraisers.

(B) Any threshold increase above the current level would encompass a much greater percentage of mortgage loans and, as a consequence, be tantamount to an Executive Branch repeal of Title XI of FIRREA with respect to residential lending – a shocking outcome never intended or even contemplated by Congress

During House oversight hearings in 2012 on Title XI, which included threshold issues, the GAO testified that between 2006 and 2009 more than 70% of all residential mortgage transactions were currently exempt from the Agencies' appraisal requirements because they were under the $250,000 threshold. That 70% number included thousands of communities and neighborhoods across the country where all or virtually all the homes purchased had a market value below $250,000. The 70% number may well be considerably higher today given the plunge in the value of homes in many places across the U.S. during the mortgage market meltdown five or six years ago. It is self-evident that any increase in the threshold would enlarge that percentage number and eliminate from Title XI's appraisal requirement, the vast majority (conceivably 80 – 90 percent) of all mortgage transactions.

Except for the appraisal requirements of the GSEs and FHA, even the current $250,000 threshold comes dangerously close to eviscerating Title XI. Any increase in the threshold would be tantamount to an Executive Branch repeal of Title XI for federally-related residential mortgage loans – a shocking outcome that should be unimaginable as a matter of public policy; and, we believe, one that would be unlawful. Our organizations do not believe that the authority granted to the Agencies in Title XI to adjust the appraisal threshold, permits the kind of wholesale blanket exemption from professional appraisal requirements that even a modest threshold increase would represent.

[6] In testimony before the Subcommittee on Insurance, Housing and Community Opportunity of the House Committee on Financial Services on June 28, 2012, GAO's witness stated: "The enterprises, FHA and lenders require and obtain appraisals for most mortgages because mortgage industry participants consider appraising to be the most credible and reliable valuation method." See also GAO-12-147.

(C) (1) Evaluations that are not performed by a state certified or licensed appraiser are a flawed and unreliable indicator of the market value of properties collateralizing federally-related mortgage loans.

A careful examination of the Agencies' Interagency Appraisal and Evaluation Guidelines (and the Agencies' related policies for evaluations and appraisals) makes clear the significant differences between the two; and, the clear superiority of appraisals over evaluations with respect to valuation reliability, integrity and accountability. While we acknowledge the good faith efforts by the Agencies to develop standards for evaluations that are credible, they are, in fact, inherently inferior to appraisals on every level. Following are some of the major differences:

First, we know that the individuals who perform appraisals must be state certified and licensed. We do not know – perhaps the Agencies do – the precise composition of the individuals who perform evaluations. We know that a small number of evaluations are performed by state licensed appraisers (in this regard, see paragraph 2 of this section). But, who performs the bulk of evaluations and what exactly are their specific valuation qualifications and credentials, if any?

Second, we know that State certified and licensed appraisers must pass a uniform national exam to demonstrate fundamental valuation competency; meet rigorous and specific qualifications requirements established by The Appraisal Foundation; and, may have to undergo a background check before they get their state-issued certification or license. By contrast, individuals eligible to perform evaluations are not required to pass any exam to demonstrate basic valuation competency and are not required to meet specific valuation qualifications requirements established by any independent body of experts. While they are required under the Interagency Guidelines to be capable of performing valuations, there are no standards or tests in place to demonstrate that they have such capability;

Third, State certified and licensed appraisers must adhere to the Uniform Standards of Professional Appraisal Practice (USPAP), which set forth uniform requirements established by experts in the appraisal profession, for how appraisals must be performed. Uniformity in appraisal methods and approaches are indispensable in order to assure equivalent or comparable valuation outcomes. By contrast, those performing evaluations who are not professional appraisers are not required to adhere to any uniform standards of valuation. As a consequence, evaluation outcomes are unlikely to be equivalent or comparable;

Fourth, State certified or licensed appraisers are accountable for the quality of their work. They are held to a strict accountability regimen which functions principally through the state appraiser licensing boards. These boards oversee their work and investigate complaints that an appraiser has violated USPAP, including its independence and competence provisions. A state agency's finding of a substantive USPAP violation usually leads to the imposition of a sanction, including mandatory additional valuation education or training, a fine and, for a pattern of malpractice, a loss of license or certification. Additionally, most appraisers carry Errors and Omissions Insurance so that lenders can be compensated for losses resulting from negligent appraisals or unethical behavior. When a state certified or licensed appraiser is credentialed by a professional appraisal organization, such as ours, they are subject to a rigorous code of ethics and the possibility of additional profession-imposed sanctions.

There are no accountability mechanisms for non-appraisers who perform evaluations that are even remotely comparable to those described above. In many and very likely most cases, no objective accountability mechanisms relating to valuation performance exist whatsoever. The Interagency Guidelines do require lenders who retain individuals to perform evaluations to oversee their work (just as they are required to oversee the work of appraisers); and, Agency examiners do review whether regulated institutions have appropriate internal procedures in place involving both appraisals and evaluations. But, these examinations are principally directed at lender internal processes and, we are advised, rarely, if ever, review the quality of the individual valuations themselves. In short, there is no third party institutionalized system – like the state licensing board - with authority and a direct mandate not just to oversee the work of those performing evaluations but to investigate complaints and sanction those whose evaluations are erroneous or lack independence. We do not believe that individuals performing evaluations who are not state certified or licensed appraisers carry E&O valuation insurance which can be used to compensate users of their services if they lack the competence necessary for the assignment or if negligence is found and there is a loss.

We believe that any consideration by the Agencies of any increase in the current threshold must first examine whether "evaluations" – which are required in situations where appraisals are not – are, in reality, a fundamentally reliable tool to ensure safety and soundness and safeguard consumer interests. Given the vast and significant differences between appraisals and evaluations discussed above, we do not think it is possible to answer that question in the affirmative. Our view is that evaluations fall far short of what is necessary for mortgage lenders, borrowers and regulators to have a high level of confidence in them.

(C) (2) Because evaluations, when performed by certified or licensed appraisers, are considered to be appraisals by the Appraisal Standards Board and by State appraiser regulatory authorities, such engagements must fully comply with USPAP and are subject to the array of accountability requirements discussed above. As a consequence, we believe that appraisers performing evaluations should be compensated under the "customary and reasonable" appraisal fee requirements of Dodd-Frank; and we respectively urge the Agencies to take immediate administrative actions to ensure that anyone (e.g., lenders and AMCs) hiring a state certified or licensed appraiser to perform evaluations is subject to the "customary and reasonable fee" requirements of the law. A similar requirement should be established by State appraiser licensing agencies for evaluations performed by certified or licensed appraisers in their states and territories.

Dodd-Frank section 1472 amends the Truth in Lending Act to require that appraisers be compensated at a rate that is customary and reasonable for appraisal services performed in the market area of the property being valued.[7] While the customary and reasonable fee provision was a result of concerns that certain Appraisal Management Companies were not compensating appraisers at a customary and reasonable rate, we believe that the same public policy rationale applies to situations in which appraisers are hired to perform evaluations. We believe it is highly inappropriate and unfair as a matter of public policy for users of valuation services to use the Agencies' threshold rules to hire certified and licensed appraisers to perform what are labeled as "evaluations" when, in fact, those performing them assume all or virtually all of the responsibilities and liability that are attendant to the performance of an appraisal. More importantly perhaps is our view that the customary and reasonable fee provisions of Dodd-Frank apply to such engagements and mandate that appraisers be paid a customary and reasonable appraisal fee for such evaluation services. Accordingly, we urge the Agencies to make clear that their customary and reasonable fee rules apply to evaluations performed by state certified or licensed appraisers.

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[7] Subsection "(i)" of section 129E ("Appraisal independence requirements") of TILA states in pertinent part: "Lenders and their agents shall compensate fee appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised….".

(D) Any Proposed Increase In the Appraisal Threshold Requires the Concurrence of the Consumer Financial Protection Bureau Before It Can Become Effective

Dodd-Frank section 1473 amends Title XI of FIRREA by requiring that the Bureau of Consumer Financial Protection (CFPB) concur in any increase in the appraisal threshold, before it can become effective. Section 1112 of FIRREA, as amended by Dodd-Frank, states:

> "*Threshold level*. Each Federal financial institutions regulatory agency and the Resolution Trust Corporation may establish a threshold level at or below which a certified or licensed appraiser is not required to perform appraisals in connection with federally related transactions, if such agency determines in writing that such threshold level does not represent a threat to the safety and soundness of financial institutions and receives concurrence from the Bureau of Consumer Financial Protection that such threshold level provides reasonable protection for consumers who purchase 1–4 unit single-family residences."

We urge the Agencies not to undertake any administrative action to increase the appraisal threshold until (1) the Consumer Financial Protection Bureau initiates and completes a review of the effects of an increase on consumer protection and (2) the Bureau concurs in writing that the proposed higher threshold level "provides reasonable protection for consumers who purchase 1–4 unit single-family residences" – as the Dodd-Frank law requires.[8] The CFPB has advised representatives of our organizations that any proposed increase in the threshold beyond its current $250,000 level would trigger the Bureau's threshold review mandate under Dodd-Frank and would require its concurrence. We believe that any action by the Agencies to increase the threshold without the concurrence of the CFPB would violate Title XI. Our organizations have written to CFPB director Richard Cordray urging him to initiate an immediate review of any action taken by the Agencies to increase the current threshold.

Conclusion

For the reasons set forth in this comment letter, our organizations respectfully urge the Agencies to reject any proposed increase in the appraisal threshold. We also respectfully urge the Agencies to revisit and reverse their previous decision to increase the threshold from $100,000 to $250,000.

Thank you for considering our views. If you have any questions or if we can furnish additional information, please contact Peter Barash, Government Relations Consultant to the ASA, NAIFA and ASFRMA, at (202) 466-2221, peter@barashassociates.com; or John Russell, Director of Government Relations for the American Society of Appraisers at (703) 733-2103 or jrussell@appraisers.org.

Sincerely,
American Society of Appraisers
National Association of Independent Fee Appraisers

Cc: NCUA
CFPB

[8] Dodd-Frank Act, Section 1473(a).