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Sent: Wednesday, January 09, 2019 9:25 PM
To: Comments
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Subject: December 7, 2018 - Real Estate Appraisals; Comment Request (RIN 3064–AE87)

Sirs:

The American Guild of Appraisers (AGA), of the Office Professional Employees International Union (#44 OPEIU) of the AFL-CIO represents the members and extended family and retirees, taxpayer and consumer real estate appraisal interests of nearly **Twelve and a half million citizens and voters**.

We object to the proposal to increase the de minimis threshold at which no appraisal is required from $250,000 to $400,000. Respectfully, if anything is done with it at all, lowering it to a range not to exceed $100,000 to $150,000 would be more prudent.

1. **The proposal is a job killer**. There are roughly 85,000 licensed or certified appraisers in America today. This does not include new trainees that have been directed by their various state regulatory agencies (such as California) not to obtain any license until they are ready to actually take their tests for license of certification levels. No one keeps track of these numbers as they used to do when trainees routinely applied for trainee or apprentice licenses and they could be enumerated. We are told this is for the benefit of the trainees, so that they are not subject to discipline during their training periods. That in itself makes no sense, but it is an aside to the issue of numbers. Most of the 85,000 have spouses or partners increasing the directly affected people losing the benefits associated with hard work to over 170,000 excluding children and dependent extended family members.

2. **The proposal removes consumer protection.** Home purchases are normally the largest single financial transaction decision consumers will make in their life time. This is no small thing. It is a decision that must not be entered into lightly. It is one that with prudent planning and consideration of all factors, may be the best financial blessing of their lives; or it can be the worst curse possible, driving them into complete financial ruin. Throughout the history of real estate and lending in the United States since the early 1930's fraud, corruption, dishonesty, chicanery, forgery, theft of deposits & investor deception have been commonplace. Today is no different.

    a. **That is why we had Glass-Steagall (Banking Act of 1933)**- to prevent a repeat of the Great Depression caused by dishonest banking practices.

    b. **The Lincoln Savings & Loan Crisis** that lead to the S&L Bailout Bill (FIRREA 1989) was a prime example of the deliberate deception

perpetrated by supposedly 'Respectable, well run Lending Institution', that in the end turned out to be a criminal operation. Fortunes were lost (and made by opportunists capitalizing on RTC 'good deals'), to the detriment of taxpayers and depositors insurance fund.

c. **The Financial Institutions Reform, Recovery & Enforcement Act of 1989** (FIRREA) was created to prevent this from ever happening again. Oddly, during its draft and revisions process it originally called for a de minimis threshold of only $25,000. Lenders; particularly those specializing in junior encumbrances (Second Mortgages) argued this was an unfair burden on borrowers 'that clearly had more than enough equity for such little loans (though they never clarified HOW that was determined to be true), argued for a higher $50,000 de minimis. For reasons that are unclear to this day, The Congress; or *more appropriately, those they had writing the legislation for them adopted a de minimis that was ten times higher than the original 'safe' proposal!* Please keep this in mind as you consider the spurious 'inflation' arguments for raising the limit.

d. **As originally proposed, FIRREA** envisioned appraisal field reviews of one in every ten appraisals performed as a means to assure the integrity, honesty and competency of those hired to perform collateral adequacy analyses. If that 10% field review criteria had been maintained it would have been virtually impossible for the Great Recession of 2008 and the Too big to Fail / TARP debacles to have taken place. Knowing their work would be reviewed for competency and accuracy would have prevented the 90% to 97% egregiously deficient appraisals that FDIC discovered performed on behalf of Countrywide and Washington Mutual in the early days of the recession. Meaningful quality control that cannot reasonably be circumvented could and would have completely prevented the disastrously under collateralized loans leading up to 2008. THIS WAS A 100% PREVENTABLE financial disaster, and fraud perpetrated on taxpayers and consumers. It was not limited to Countrywide or WAMU. Look at Wells Fargo's track record of fines & admissions of guilt for outright fraud and deception over the past twenty years. <u>These dishonest lender actions are not anomalies…they are the routine of business as usual</u>! Let's stop the pretense that we are dealing with honorable financial gurus only interested in 'customer service' rather than enhanced fleecing opportunities.

e. **In the wake of the Countrywide / WAMU scandals,** then NY Attorney General Andrew Cuomo blamed weak willed and immoral appraisers for the fraudulent appraisals. He adopted a settlement for New York to seek an alternative purportedly able to prevent this in the future by introducing what was later to become HVCC, or the Home Valuation Code of Conduct. Unfortunately he and other behind the scenes special interests selected the very same foxes that had been involved in facilitating so

much loan fraud to operate as the gate keepers of appraiser independence and integrity. HVCC was one of the worst policies ever adopted by federally regulated institutions in a knee jerk reaction designed solely to be seen as "doing something" about the causes of TARP.

f. **HVCC created a systematic scheme of appraisal price fixing** across America (Read Coester VMS early advertising claims; or access any of the thousands of discovery documents in recent litigation agaisnt them by one courageous appraiser). Not only was HVCC responsible for price fixing, it encouraged and promoted a system in which completely unqualified, incompetent and often dishonest Appraisal Management Company executives routinely coerced inflated appraisals by threats and actual debarment from work agaisnt hundreds of appraisers.

g. **Dodd-Frank was supposed to close up some of the loopholes created by HVCC** that lingered even after HVCC was eliminated. The regulation was removed, but the results remained. Dodd Frank properly identified ongoing undue influence of appraisers as an issue requiring remediation. It also recognized that much like minimum wage laws, competent, professional quality appraisal expertise takes time, and requires adequate compensation. Absent either of these, appraisers unable to feed, clothe and house their families, or to care for their medical needs would once again be subject to undue financial pressures. The wording of the Act created admirable laws, regulations and goals…but failed to require or provide adequate enforcement measures. *An inadequacy that remains to this day*. The ***Reasonable & Customary*** appraiser fee requirement of Dodd-Frank has never been adequately enforced in the country.

h. **Several states; most notably Louisiana; North Carolina, and Virginia** took it upon themselves after much urging & warnings by appraisers, they passed defined and measurable '*customary & reasonable fee laws'*; and some passed AMC registration and licensing laws in advance of Appraisal Sub Committee requirements to do so. Note how the term reversed from the Dodd Frank LAW to interpretation; "customary" somehow came before "reasonable" which is a much easier metric to define and measure. This was no accident. It was part of a plan and practice put into effect by AMC advocacy groups, that fully intended to circumvent the C&R fees by clouding how 'customary' would be interpreted. Even though Dodd Franks language already defined it. "Reasonable" ceased to be a meaningful consideration at all.

i. **AMC Advocacy Groups** acting on behalf of mortgage lenders, brokers and other lenders convinced the Federal Trade Commission (FTC) operating with less than a quorum of appointed Commissioners, to file suit agaisnt the one state that was attempting to enforce deliberate violations

of their states C&R appraisal fee laws. That suit by FTC has resulted in virtually all other states that had minimum fee laws and requirements to cease enforcing them. It has been used as an excuse by others to defer passing enforcement or enabling legislation at state levels to implement the R&C (vs C&R) requirement of Dodd-Frank.

j. **Dodd-Frank attacked by American Bankers**. The consumer protection aspects of the Dodd-Frank legislation curtailed banks ability to defraud customers. It was attacked almost immediately by the bankers lobbyists and attorneys. Instead of being debated on its own merits as a law, it was turned into a political crusade of Blue Vs Red. The House Financial Services Committee under Congress Member Jeb Hensarling (R-TX) attempted to 'repeal or replace' it in it's entirety, rather than only amend the potentially burdensome aspects of it that may be too severe on smaller banks (may or may not be). It would also have eliminated all the laws requiring appraiser independence and reasonable fees language.

k. **Further erosion of consumer** and appraiser rights and support through banking lobby manipulation. The TILA RESPA INTEGRATED DISCLOSURE (TRID) rule that became the new Truth in lending act / Real estate settlement procedures act *FIXED APPRAISAL PRICES*. The TRID is required to be given to a borrower at the time of the loan application. The quote for the appraisal fee is also given at that time. This is before an AMC is hired. This is before any appraiser or other competent person has screened the property to determine its appraisal / valuation complexity.

   The lender gives loan officers a fixed fee appraisal rate that they have agreed to accept and or split with the AMCs they contract with. The borrower appraisal fee quote (typically $650 to $725) is given before the AMC ever contacts an appraiser to obtain a real quote. TRID can be revised if new signatures are obtained, but no (or exceptionally few)) lenders have that level of integrity. Most falsely argue that once quoted, TRID can't be revised at all. Therefore, a homeowner with a property that takes a $500; $1,000 or even $1,500 fee due to complexity is limited to bottom of the barrel appraisers that will accept $250 - $350 for the fee allowing the AMC and the bank to pocket the remaining $300 to $375! The settlement/escrow disclosure statement lies and misstates that the appraisal fee was $725 even though it wasn't. The below C&R fee was as low as $250 in many instances. Behind the scenes state and federal regulations facilitate this fraudulent deception of taxpayer/consumer borrowers.

l. **Congress Member Maxine Waters** (D-CA) is now the Chair of the powerful House Financial Services Committee. Congress Member Waters is not likely to overlook facilitation of further fraud by Administration officials or federal agencies. Bloomberg News recently reported: "Waters

is a vocal Trump critic. *As chair, she'll have a powerful megaphone to call out misbehaving banks—and the investigative powers that come with it.* ***Top priority:*** *"To bring accountability to the Trump Administration and the regulatory agencies under the Committee's jurisdiction," including the Consumer Financial Protection Bureau*, she said in a press release. **Why Republicans should be scared:** Expect Waters to be aggressive on oversight. That means more grilling of bank executives before the committee and more scrutiny of Trump's relationships with financial institutions. This is not a good time for career bureaucrats of federal agencies to be adopting policies or rules that further erode consumer protections in such a public and obvious manner as increasing the de minimis limit does.

m. **Make no mistake**…Even thought he AGA tries diligently to avoid partisan positions (after all appraisers are on both sides of the aisle, just like the rest of America is), we will not hesitate to hold the feet to the fire of any elected official; appointed bureaucrat, career civil service employee or regulator (by name) that facilitates further erosion of consumer and taxpayer protections for the benefit of proven thieves and swindlers.

3. **Unacceptable risk to taxpayers**- Federal agencies have claimed with zero support for the claims, that increasing the threshold to $400,000 poses no increased risk to taxpayers. Of course it does! At minimum it increases the exposure to loss from $250,000 to $400,000! The only truth in the claim that increasing the limit 'poses no more risk' is within the context that so many, if not all protections have already been eroded so far that no "greater" risk results from yet one more stripped away protection. Taxpayers should not have to bail out Wall Street every 15 to 20 years!

4. **"Protect the Public Trust"** is a phrase that appears throughout The Appraisal Foundation (TAF) publications and websites. It appears in the introductory language of virtually every states appraisal licensing and regulation laws. Their state implementing laws of FIRREA. **Yet, it is never defined**. Nearly every bad revision of USPAP; federal or state regulation that erodes public trust (as well as that held by appraisers themselves) recites the phrase "to protect the pubic trust" as justification for the evil intended change, revised interpretation or new administrative 'process'…but none credibly define how the subsequent chicanery goes about doing that.

5. **False Flag**, The reason most oft cited for increasing the de minimis threshold is 'inflation' from 1994 to present. (Oddly that same inflation is never accepted when reasonable appraisal fees are discussed). Adjustments for inflation are accepted as necessary for civil service employees; for Congress Members and state regulators. Inflation adjustments are appropriate for federal and state entitlement programs, where human beings depend on the income for living.

Giving high risk activity a cute name like *de minimis threshold does not raise it to the level of an entitlement*! **In 1994 the de minimis was already TEN TIMES higher than the arguable safe-risk originally proposed amount**! This was proven again in 2008 when FDIC discovered so many bad loans and appraisals associated with Countrywide HELOCS (Home Equity Lines of Credit). IF further consideration is to be given to raising the de minimis (instead of lowering it), then the federal agencies that have opined there is no increased risk need to cite specific studies performed by specific NAMED federal analysts that have proffered these opinions. We don't recommend the thoroughly refuted FHFA white paper on AVMs to support the claim.

6. **It is time to call out the liars**. The liars that *claim consumers 'demand' faster mortgage processing*. The liars that claim an *"Amazon like" mortgage process that is faster and more intuitive is being demanded by consumers*. The liars that *claim big data and technology have all but eliminated the need for appraisals*, while failing to acknowledge their own products still cannot reliably provide credible results on most properties analyzed. The liars *whose stock cannot even be sold in America*. The liars *with a track record of deceiving American consumers and taxpayers going back before 1933*. The liars *that pretend receiving faster mortgage commissions isn't a factor at all*. The banking industry has not earned any degree of trust in over a hundred years.

   One claiming a history going back 150 years seems to spend every other year trying to reinvent itself so that consumers and investors will forget how they were all defrauded the year before. **They are a necessary evil, but lets not pretend we have a moral obligation to *treat their selfish special interests as an entitlement***. Similarly, lets not let the 'language of professionals' hide the fact that many of the speakers are rogues of the worst sort. I'm ok calling proven liars 'liars'. The FDIC should be too. Instead of considering a rise in the de minimis, referrals to the FTC for violation of the Sherman Anti Trust Act; and to the Department of Justice for an investigation into an ongoing criminal enterprise would be more appropriate under RICO statutes.

7. I have been a real estate agent; credit union financial counselor, credit union manager and appraiser for well over forty years. I KNOW that consumers often second guess their hurried decisions. Even in normal term real estate sale transactions a real phenomena called buyers remorse crops up in nearly every sale & even refinances. We have it with impulse purchases. We have it buying cars. We absolutely have in in home purchases. It has to be dealt with. Usually through honest reassurance of the benefits, and checks and balances designed to protect the buyer or home owner. Increasingly though, subterfuge and a false illusion of speed being required is the chosen alternative. Afterall,, informed consumers are harder to defraud.

We, at AGA urge the FDIC and regulators to refuse to raise the threshold at which level appraisals may not be required in federally regulated institution transactions.

It's for the protection and preservation of Public Trust.

Respectfully, for American Taxpayers and consumers,

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