



1130 Channingway Drive  
Fairborn, Oh 45324

Tel: 937.873.9900  
www.stickelman.com

January 19, 2009

Office of the Comptroller of the Currency  
250 E. Street, SW  
Mail Stop 1-5  
Washington, DC 202219

**Re: Proposed Interagency Appraisal and Evaluation Guidelines, Docket ID OCC-2008-0021**

Sirs:

The following document contains comments on the Proposed Interagency Appraisal and Evaluation Guidelines by Stickelman Schneider & Associates (SSA). SSA is a large regional appraisal company headquartered in Dayton, Ohio.

Stickelman, Schneider & Associates would like to address the following areas:

- 1. Appraiser Independence**
- 2. Regulatory Enforcement of FIRREA**
- 3. Structural Issues Facing Real Estate Valuation and Management**
- 4. Appraisal Exemptions**

### **Appraiser Independence**

The Proposed guidelines clearly address the question of independence by isolating those who perform appraisals and evaluations from influence by the loan productions staff. Appraiser independence is in itself addressed within the context of USPAP which must be adhered to under FIRREA and by every state licensed real estate appraiser. This formal isolation of the appraisal function may have unintended consequences. At a basic level it may sever and confuse the client appraiser relationship specifically as it relates to scope of work. In addition, important business relationships historically cultivated are in jeopardy and lending institutions may be forced to utilize the services of less qualified individuals. Many lending institutions are likely to utilize the services of Third Party vendors for appraisal services losing control over customer interest and quality of service.

## **Regulatory Enforcement of FIRREA**

Financial institutions and their use of appraisers and appraisals have been federally regulated under FIRREA for nearly 30 years. FIRREA remains a dynamic and important piece of legislation that provides the foundation for appraisal regulation. It has been inadequately interpreted by the regulatory agencies. Much of the recent collapse of the credit markets resulted from poor underwriting decisions and a lack of regulation, oversight and enforcement. Regulatory agencies should interpret FIRREA at its most stringent level. Section 1110, Title XI of FIRREA states that regulatory agencies shall “prescribe appropriate standards for the performance of real estate appraisals...These rules...” The use of “guidelines” as opposed to standards and rules is ambiguous and open to interpretation. Absolute regulatory compliance is virtually impossible and allows financial institutions to operate independently and outside of the parameters required for public trust.

SSA recommends the adoption of a set of written rules and standards that financial institutions must adhere to in the operation of their appraisal functions. These rules may incorporate other standards including but not limited to USPAP and additional supplemental standards. Enforcement of the rules and standards must be measured, meaningful and stringent. Examiners must be sufficiently trained and qualified to understand appraiser qualification, appraisal methodology and the overall function of an institutions appraisal departments. If applicable they should be knowledgeable of any appraisal management functions including specifically approved Third Party arrangements. It is recommended that examiners have sufficient appraisal qualifications specifically in USPAP, methodology and report writing

There must be an ongoing review of an institutions real estate loan portfolio risk by examiners to include spot compliance audits. Institutions must be held immediately accountable for potential risk and non compliance. Examiners should work with outside independent valuation professionals able to provide knowledgeable and accurate assessments of portfolio values and unacceptable contractions of risk.

## **Appraisal Management Companies**

The proposed guidelines are comprehensive and address most recent changes within the financial industry and USPAP. However, the role, relationship, regulation and accountability of appraisal management companies (AMC) within the appraisal function of banks are ambiguous. At this juncture the majority of regional and national banks utilize the services of third party appraisal vendors. This trend is likely to continue with the recent publication of the Home Valuation Code of Conduct (HVCC).

The proposed guidelines offer limited guidance on the effective oversight of third party vendors. Page 36 of the document addresses **Third Part Arrangements** by stating:

“Effective program oversight should address any arrangements with a third party, acting as agent for the institution, providing appraisal and evaluation services. An institution should monitor and periodically assess these arrangements for compliance with program standards and the Agencies’ guidance on third party arrangements. If deficiencies are discovered, the institution should take remedial action in a timely manner.”

This paragraph refers to specific program standards that have not been developed within the context of the appraisal function. SSA recommends that the regulatory agencies provide additional guidance that identifies acceptable relationships between the appraiser, AMC and regulated institution. Regulations should identify the minimum standard of qualifications for AMC personnel, unacceptable compensation arrangements, appraiser selection practice, quality control policy and execution. Regulators should conduct independent audits of third parties who provide services to banks for real estate valuation services. This regulatory authority and responsibility was addressed in the 2001 Interagency Guidance on the use of Third Party providers. It has seldom been used by regulatory examiners or agencies in the real estate appraisal function.

Examiners should audit contracts of AMC managers and executives to prevent compensation for the effective profit spread forced on their cost of good (COGS), contract appraisers performing appraisal assignments.

### **AMC be identified as a “Duly Authorized Agent”**

USPAP defines the client as: “the party or parties who engage an appraiser (by employment or contract) in a specific assignment.” Several state appraisal boards have interpreted the role of AMC as Client and the financial institution as the Intended User. Unless the AMC is a specifically authorized agent, it is questionable whether the appraiser is engaged by a regulated institution. Appraisers require clear and specific identification of client and intended user to identify assignment conditions and develop the appropriate scope of work. Failure to do so can result in a misleading report.

### **Regulation of Appraisal Management Companies**

The overall appraisal function of financial institution is carefully regulated under FIRREA. Real Estate appraisers must be state licensed or certified in order to complete assignments for Federally Related Financial Institutions. Appraisal assignment must conform, at minimum, to the Uniform Standards of Appraisal Practice. The AMC is now managing the appraisal functions of financial institutions including, but not limited to: hiring of an appraisal panel; setting standards and qualifications for the appraisal panel; ordering appraisal reports; obtaining bids and awarding contracts; delivering appraisal reports; communicating value opinions and reviewing appraisal reports. SSA recommends regulation of third part agents identified as appraisal management companies.

## **Appraisal Quality**

SSA warns that discounted fees and rapid turn time expectations of AMC will affect the quality of appraisal reports. Insufficient regulation of review and qualification standards could lead to substandard and risky collateral valuations.

Appraiser quality, heavy discounting of fees paid to the appraiser causes systematic risk to the quality of appraisals and a safe and sound banking system. This can manifest itself in the following:

- Lack of adequate economic resources for quality education
- Lack of adequate time for proper analysis of ever riskier markets
- Lack of capital for resources, apprentice programs, professional development, research, and the purchase of economic and transactional data basis etc.

National banks or their third party providers must be prevented from “price fixing” sub standard appraisal fees that do not allow the appraiser to provide adequate analysis and reporting of creditable values and changing economic conditions.

## **Consumer Disclosure**

SSA recommends that consumer borrowers receive full disclosure of the professional appraisal and any additional fees that are paid to a third party vendor. This recommendation is made in light of two recent lawsuits against Countrywide and Wells Fargo. The suits claim that the company’s force homeowners to use its wholly owned subsidiary (LandSafe for Countrywide and RELS for Wells Fargo), for appraisals. The company in turn subcontracts the work to independent appraisers while charging homeowners up to 200 percent of the actual cost of the appraisal.

## **Appendix A- Appraisal Exemptions**

### **Appraisal Thresholds**

The appraisal threshold level for a transaction should be lowered from \$250,000 to \$50,000 for residential properties and \$100,000 for commercial properties. An excessively large percentage of toxic mortgages and consumer foreclosures are well below the present threshold amount. Typically, the least informed segment of the consumer population is at the entry level or low end of the transaction range, below the threshold amount. This leaves the consumer exposed and under serviced when an appraisal by a licensed or certified appraiser is not required. It could be argued this is a form of economic discrimination against those needing protection for the accurate valuation of their real estate collateral.

### **Abundance of Caution**

In light of recent economic developments it essential that financial institutions have an accurate knowledge of the value of collateral used either primarily or secondarily to secure and/ or qualify a loan. As a safeguard to public trust all areas of an institutions real estate loan portfolio should be accurately appraised even if it is not to be used specifically for the repayment of the loan. The “Abundance of Caution” classification has been greatly abused by many banks. Regulation and guidance must be clear and specific on its appropriate use.

### **Renewals, Refinancing, and Other Subsequent Transactions**

This section may be open to abuse and is potentially dangerous if declining real estates markets are not accurately identified. Despite the assurance that no additional funds will be advanced, this provision may ignore existing loan to value ratios. Equity that once existed in real estate may have been eroded in declining markets. Certain categories and types of real estate that were once viewed as safe may become risky. Insufficient collateral valuation exposes a financial institution to potential loss.

### **Transactions that Qualify for Sale to, or Meet the Appraisal Standards of a U.S. Government Agency of U.S. Government Sponsored Agency**

This exemption is troubling due to the considerable losses that Fannie Mae and Freddie Mac have taken over the last twelve months. Further the origination of FHA loans is now increasing at record rates with low qualification of borrowers. If this exemption is removed, the regulation becomes an additional check against quality and fraud.

### **Conclusion**

In light of the current economic climate that includes a credit crisis in banks; a slow real estate market and high foreclosures, SSA recommends the following:

- Specific standards and rules for the regulation of the appraisal function of financial institutions that are enforceable, unlike guidelines which are only open to interpretation
- Clarification of the role of Appraisal Management Companies with federal regulatory control and audit.
- Specific rules on the qualification and use of third parties within the appraisal function of lending institutions.
- Regulation or removal of Appraisal Management Companies
- Removal of specific exemptions from the guidelines.
- Reducing the threshold amount from \$250,000 to \$50,000 for residential real estate and \$100,000 for commercial real estate.
- Elevate the knowledge of regulatory examiners in the field of real estate valuation, analysis and reporting as well as in the concentration of possible real estate portfolio risk.

- Set review and reviewer qualifications for federal banks or their third party vendors.

Stickelman, Schneider & Associates appreciates opportunity to provide comments and looks forward to final publication the Interagency Appraisal and Evaluation Guidelines.

Yours truly,



Ronald K. Stickelman, SRA  
President and CEO  
ron@stickelman.com



Sally J. Carothers, MRICS  
Vice President  
Chief Compliance Officer  
sally@stickelman.com