

APPENDIXES

APPENDIX 1

PHILIP BENTON JR. SENATOR, MISSOURI
JOHN D. SPRATT JR. SENATOR, SOUTH CAROLINA
MATTHEW S. HARTZELL, CLERK
JIM COLEMAN, SENATOR, MISSISSIPPI
ALBERT S. BOUTWELL, TOLSON
JOHN A. WALKER, SENATOR, MISSISSIPPI

ONE HUNDRED FIRST CONGRESS
Congress of the United States
House of Representatives
COMMERCE, CONSUMER, AND MONETARY AFFAIRS
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM 8-377
WASHINGTON, DC 20515

J. EDWARD RUFFERT, CLERK
OFFICE OF THE CLERK
U.S. HOUSE OF REPRESENTATIVES
4 CONGRESS BUILDING, WASHINGTON, D.C.
20540-5000
202-556-2000

July 31, 1990

Honorable Alan Greenspan
Chairman
Federal Reserve Board
Washington, DC 20551

Dear Mr. Chairman:

As you know, the Appraisal Reform Amendments of Title XI of FIRREA requires the Federal Bank Regulatory Agencies to promulgate regulations implementing Title XI. These regulations are designed to enhance the safety and soundness of residential and commercial real estate lending through an improved Federal and State system for valuing collateral in federally related transactions. The Federal Reserve Board's proposed regulations did an excellent job of giving effect to Congressional intent.

As with all regulations, revisions and refinements are necessary and appropriate, but as past and present members of the Subcommittee on Commerce, Consumer and Monetary Affairs, we were very concerned to learn that the final regulations issued by the Federal Reserve Board on July 5, 1990 will undermine the essential purposes of Title XI. As the legislation originated in this subcommittee and we are responsible for its oversight, we respectfully request that the Board reconsider its position.

The provisions of concern are as follows:

1. No appraisals whatsoever are required for mortgage loan transactions below \$100,000 (in the proposed regulations, the tolerance was \$15,000).

It is difficult to understand that in the face of the S&L crisis and the crisis in the FHA residential mortgage insurance program as well as the Comptroller's findings of appraisal deficiencies in New England institutions that the Bank Regulators would permit mortgage loans of \$100,000 or less to be made without an appraisal. While it is true that much of the Government's losses in the S&L crisis resulted from the commercial projects, billions of dollars of losses involved single family residential properties. I am told that the average residential property in the United States costs approximately \$96,000. This means that for at least half of all residential mortgage loans in the United States, no appraisal will be required if the Federal Reserve Board regulations are adopted by the other bank regulatory agencies.

2. Residential and commercial mortgage loans under \$250,000 can be performed by (less qualified) licensed appraisers. Residential mortgage loans between \$250,000 and \$1,000,000 can also be performed by licensed appraisers

because the Federal Reserve Board adopted the presumption that transactions in this dollar category were non-complex.

In point of fact, Title XI requires the opposite presumption. In the House report accompanying Title XI, it states that Congress favors the broadest possible use of certified appraisers because of the superior skills they bring to the appraisal process. In addition, almost any transaction of any dollar amount can be of sufficient complexity that the services of certified appraiser should be required. For instance, appraising property in a severely distressed market almost invariably would greatly increase the complexity of a particular transaction.

If all of the bank regulatory agencies adopt the Federal Reserve Board's rules, this would essentially mean that millions of residential mortgage loan transactions will not be accompanied by any appraisal and that the vast majority of all mortgage transactions will be appraised by licensed and not by certified appraisers.

It is not our contention that there be no flexibility in setting the de minimis threshold for mortgage loan transactions, and that \$15,000 is exactly the right amount. During subcommittee oversight hearings on May 17, the de minimis threshold issue was raised as a particular concern for small, rural institutions who tend to rely on in house appraisers due to a lack of available qualified appraisers. Some regulatory flexibility has already been proposed in terms of permitting the appraisal to be independent of the transaction as opposed to the institution.

It was never the intent of Congress that potentially half of all residential mortgage transactions be exempt from the requirements of Title XI. While an individual \$100,000 transaction may be de minimis in contrast to a multi-million dollar commercial real estate loan the hearing record on which the legislation is based contains examples where many faulty or fraudulent residential appraisals, such as for a whole development, were strung together, the end result being a multi-million dollar loss. Additionally, while the de minimis threshold is ostensibly intended to assist small institutions in small transactions, the size of the losses these institutions can absorb is also commensately smaller.

We respectfully urge the Board to reconsider these regulations and to develop new regulations more in keeping with the intent of the legislation. We understand that the Board is considering the following changes:

(1) The de minimis amount at and above which an appraisal pursuant to Title XI is required in a federally related transaction, would be changed to \$50,000; and

(2) Licensed appraisers would be eligible to perform appraisals in residential transactions of between \$50,000 and \$500,000; and certified appraisers would perform appraisals in federally related transactions of \$500,000 up to \$1,000,000 (at which point Section 1113 of Title XI clicks in).

We welcome the changes under consideration and as a result have postponed our oversight hearing. We hope that our additional comments below will help facilitate a resolution of this matter.

(A) We believe it is imperative that the decision to lower the de minimis from \$100,000 to \$50,000 be coupled with a strong Federal stand on the minimum qualification requirements necessary for the state licensed appraisers who would be performing residential appraisals in transactions of \$50,000 or more. This would assure that the additional appraisals would be performed by truly qualified individuals.

All the members of the Appraisal Subcommittee have stated their commitment to establishing minimum licensing qualification requirements for federally related transactions that are identical to the Appraisal Foundation's qualification requirements for performing residential appraisals. We strongly support this commitment.

The key question here is how the Federal Government is to establish the requirement that state licensing must meet, at a minimum, the requirements of the Foundation's Qualification Board for residential appraising. Title XI offers two ways of carrying out this policy: First, through the bank regulatory agencies' Title XI implementing regulations; and second, by the authority vested in the Appraisal Subcommittee to disapprove state certification and licensing systems that fail to properly protect the Federal interest.

Our strong preference would be to use the Title XI implementing regulation process for this purpose rather than relying on a state-by-state approach which would be time-consuming, expensive, and politically difficult. While it continues to be our belief that there is an adequate supply of residential appraisers who are sufficiently competent IM to meet any qualification test, we acknowledge that there are those who may argue that by establishing this requirement for licensing, temporary shortages in some localities could occur. Title XI, of course, permits waivers of all requirements in such circumstances; and the statutory deadlines imposed by Title XI have worked well to galvanize the states into action. However, if you believe it necessary, a January 1, 1992, effective date for state-licensed appraisers to meet the residential qualifications requirements of the Appraisal Foundation, might be appropriate.

If the state-by-state disapproval mechanism is selected, the Appraisal Subcommittee immediately should issue a supplemental guideline to the states, specifying the Foundation's residential appraiser qualification requirements.

(B) Provided that state-licensed appraisers are required to have the skills established by the Qualifications Board for residential appraisers, there is no necessity for any distinction between the use of licensed versus certified appraisers for noncommercial residential transactions up to \$1,000,000. Accordingly, our recommendation would be to eliminate the proposed \$500,000 cut off between the use of licensed or certified appraisers. This would simplify requirements for residential appraisals; and relieve mortgage lenders of the need to make decisions relating to presumptions regarding "complex" vs. "noncomplex," and "licensed" vs. "certified," etc.

(C) In the Title XI regulations as originally proposed, a \$15,000 de minimis was established for appraisals and (approximately) no valuations whatsoever were required below the \$15,000. When the Federal Reserve Board adopted the \$100,000 de minimis, it made it clear that a market valuation of collateral property, in accordance with Interagency Appraisal Guidelines, would still be necessary. It is understandable why the Federal Reserve Board

felt it still had to require some type of valuation of collateral, even as it attempted to give their financial institutions more flexibility as to how that valuation would be accomplished and by whom. The reason, we believe, is fairly simple and is actually set forth in those Interagency Guidelines: Where the value of the collateral is a material factor in making a mortgage loan, safety and soundness require a competent valuation of the collateral.

The point we are raising here is the concern that under the law of the land (i.e., Title XI), whenever a valuation is required (irrespective of whether the valuation is called an appraisal or something else), it must be performed pursuant to Title XI by a licensed or certified appraiser, etc. Title XI does not require a Federal agency to require an estimate of a property's value as collateral. But once a Federal agency takes a decision that safety and soundness or other public policy purposes require a valuation, then it is our belief that the valuation must be performed pursuant to Title XI.

Accordingly, while the \$50,000 tolerance is a major improvement, we are concerned that so long as you require a valuation of collateral below this amount, which is certainly prudent, you may be challenged in court as to the valuation procedure's compliance with FIRREA. Your counsel should review this point.

(D) We also have concerns over allowing licensed appraisers to perform appraisals for commercial federally related transactions of \$250,000 or less. Appraisers who have a "general" classification are typically trained to evaluate property which is being utilized for commercial or income-producing purposes. Our recommendation, therefore, would be not to permit licensed appraisers (even though the license meets Foundation residential requirements) to appraise any property being used for commercial purposes.

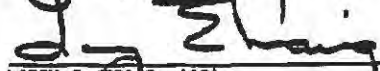
We sincerely hope that our suggestions will assist you in balancing the taxpayers' need for protection against mortgage defaults, on the one hand, with the banking industry's desire to have some flexibility in the way they underwrite mortgage loans. Thank you for your consideration and we look forward to your response.

Sincerely,

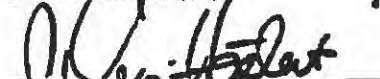

ALBERT G. BUSTAMANTE (TX)


DOUG BARNARD, JR. (GA) CHAIRMAN


JOHN M. SPRATT, JR. (SC)


LARRY E. CRAIG (ID)


JAMES M. INHOFE (OK)


J. BENNETT HASTER (IL)

Amos Horton
AMORY HOUGHTON (NY)

⁵ Frank Horton
FRANK HORTON (NY)

Joe Kolter
JOE KOLTER (PA)

Ben Erdreich
BEN ERDREICH (NY)

Jack Brooks
JACK BROOKS (TX)

cc: Hon. Robert L. Clark
Hon. L. William Seidman
Hon. Timothy Ryan
Hon. Roger W. Jepsen