



Testimony presented on behalf of the

**Appraisal Institute
American Society of Appraisers
American Society of Farm Managers and Rural Appraisers
National Association of Independent Fee Appraisers**

Before the House Financial Services Committee

On

H.R. 1728 The Mortgage Reform and Anti-Predatory Lending Act

Presented by

**Jim Amarin, MAI, SRA
President
Appraisal Institute**

April 23, 2009

Appraiser Independence

A recent report by the Mortgage Asset Research Institute states that “reported mortgage fraud is more prevalent now than in the heyday of the origination boom.”² Unfortunately, this report cites “Appraisal/Valuation” issues as the third most prevalent type of mortgage fraud. Our organizations believe that a majority of the issues related to appraisal/valuation arise when a party who has a vested interest in seeing that a particular mortgage transaction closes is the same party that is managing the appraisal ordering process. In many cases, appraisers are ordered or severely pressured to doctor their reports and to convey a particular, higher value for a property, or else never see work from those parties again. This is a terrible conflict of interest. While our members are confronted with systemic coercion on a regular basis and reject it outright, too often state licensed and certified appraisers are forced into making a “Hobson’s Choice.”

Congress took a huge step forward on this issue in 2008 with the passage of H.R. 3221, the Housing and Economic Recovery Act of 2008 (HERA). Title V of HERA enacted the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) which requires all states to enact new mortgage loan originator licensing requirements within two years. Based upon this requirement, the Conference of State Bank Supervisors (CSBS) developed excellent model state legislation, which includes a provision that prohibits mortgage loan originators from making any payment, threat, or promise to any person for the purposes of influencing the value that is reported in conjunction with an appraisal for a mortgage loan. To date, language similar to that included in the CSBS model has been enacted into law in 25 states³. Legislation that would enact similar requirements is

² Denise James, Jennifer Butts, Michelle Donahue, “

³ AK, AR, AZ, CA, CO, CT, DC, ID, IN, IA, KS, KY, MI, MN, MS, MO, NM, NY, NC, ND, OH, SD, UT, WA, WV – More information, including links to the statutory language is available on the Appraisal Institute’s website at <http://www.appraisalinstitute.org/newsadvocacy/stateissues.aspx>

currently pending in 24 additional states⁴. We strongly support these state laws and the pending legislation. In fact, we would like to see these appraiser independence laws expanded to prohibit any person, not just mortgage loan originators, from attempting to improperly influence an appraiser. Violators of state appraiser independence laws risk suspension or revocation of their license, as well as potential civil action, and in some states, criminal enforcement with the possibility of a prison sentence.

While these are all excellent state laws, they are only as good as their enforcement. Fortunately, Attorneys General in several states have taken action to ensure the independence of appraisers in the real estate valuation process. In June, 2007 former Ohio Attorney General Marc Dann initiated complaints against ten mortgage brokerage firms and lenders alleging inappropriate influence on appraisers⁵. Many of these complaints have been settled, and have resulted in license revocations, surrenders, lengthy suspensions, and hefty fines. But action by Congress can ensure even enforcement in all states and jurisdictions.

Further, New York's Attorney General conducted a broad investigation of mortgage fraud and acted on its findings. That investigation led to an agreement with Fannie Mae and Freddie Mac and a commitment to protect the independence of appraisers in the mortgage loan process. We encourage additional state attorneys general to take swift and certain action against any party that improperly influences an appraiser, with severe civil and criminal penalties.

We also applaud the Federal Reserve Board's adoption of a new version of Regulation Z that will make it a violation of the Truth in Lending Act for a creditor or mortgage broker to coerce, influence, or otherwise encourage an appraiser to misstate an appraisal in connection with a mortgage loan.

Lastly, we note that the federal bank regulatory agencies have proposed a new version of the Interagency Appraisal and Evaluation Guidelines which reemphasizes the importance of the independence of an institution's appraisal and evaluation program from influence by the loan production process or borrower. The new rules will become effective on October 1, 2009.