TAVMA POSITION ON APPRAISAL INSTITUTE PROPOSAL FOR NEW APPRAISAL MANAGEMENT COMPANY (AMC) REGISTRATION AND REGULATION

Introduction and Background

The Appraisal Institute ("AI") has proposed a model act to register and regulate Appraisal Management Companies ("AMCs"). It contains many of the requirements recently proposed in the GSE – New York AG "Code of Conduct", as well as the proposed and updated inter-agency guidelines. The AI proposal suggests sweeping new requirements for AMCs overall, including new rules for the owners, managers and appraisal-related employees of AMCs. It would give state appraisal boards the right to review AMC fee schedules, and to address the appraiser pressure issue.

The Apparent Issue of Concern for the AI

Apparently, the AI believes that this proposal has become necessary because some appraisers, who have had their licenses revoked, have set themselves up as AMCs. Since AMCs are not regulated, the AI believes that this condition should not be allowed to exist and that AMCs must be regulated to prevent it. Unfortunately, the AI proposal goes far beyond that issue and would regulate a whole industry to address a hypothetical concern about de-licensed appraisers.

Such a scheme also over-reaches the original scope and jurisdiction of state board authority as prescribed in Title XI of Financial Institutions Reform, Recovery and Enforcement Act ("FIRREA"). The proposed legislation presumes that state appraisal boards have the manpower, experience, and technical skills to regulate the AMC industry. But, we know that state boards are struggling to handle their duties already. They do not need new laws to enforce, as much as they need additional funding and staff to enforce the laws that they already have. To address that problem, TAVMA has supported increased funding for state appraisal boards and continues to do so.

Further, if a new regulatory program were to be put in place, it begs the question of what regulations would the boards enforce. The body of law that state appraisal boards are charged with upholding are found in the Uniform Standards of Professional Appraisal Practice ("USPAP"), but there is no discussion of AMCs in USPAP or in its Statements or Advisory Opinions. Only USPAP FAQ #71 contains a short reference to AMCs. The net effect of this reference is that, although AMCs are the 'client' of an appraiser in ordering an appraisal report, the appraiser can list the actual lender on the report as the client.

Unless and until the appraisal trade groups are able to provide specific examples of de-licensed appraisers setting-up AMCs, this issue must be considered a minor problem and one that does not require the type of over-regulation proposed.

AMCs Are Not Appraisers

One may be inclined to ask why AMCs have not been regulated by USPAP in the past. The answer is both elementary and essential. AMCs do not perform appraisals any more than their lender clients perform appraisals. Appraisers perform appraisals and should be the real focus of this regulation effort. AMCs are facilitators of the process of ordering appraisals, tracking their status, and timely delivering them. AMCs often perform quality control, and deliver the appraisal to the client under service agreements which describe the levels of service expected for each product, often with a warranty. Under such warranties, if the report fails to meet minimal standards and the client suffers a direct loss as a result, the service and quality warranty can provide additional protection for the client. For a list of value-added services, see Exhibit 'A', "Appraisal Management Company (AMC) Value Proposition."

To suggest that State Appraisal Boards assume regulatory control of AMCs is like suggesting the Federal Aviation Administration (FAA) should regulate the travel agency industry simply because the latter generates the passengers for the airplanes. We respectfully submit that AMCs are not appraisers and should not be regulated as such. AMCs act as agents for the lenders in acquiring appraisal services in a timely and efficient fashion. Since AMC lender clients are regulated federally, TAVMA proposes that if registration of AMCs is deemed necessary, it would be more appropriate for that to occur at the federal level, as a logical extension of the control already provided for the banks, thrifts and credit unions that make up the majority of AMC clients.

State appraisal boards were delegated the responsibility to certify and license individual real estate appraisers and to supervise their appraisal-related activities. Unfortunately, the state boards have struggled to obtain the necessary staff and funding to perform their regulatory functions. During the discussion of the Ney-Kanjorski bill some years ago, TAVMA supported additional funding for the state appraisal boards. It seems that new laws may not be needed if the existing laws were adequately enforced. While we understand the need to prevent improper pressure upon appraisers, it is important to remember that each licensed appraiser is subject to the requirements of USPAP that they perform an objective, unbiased appraisal report. Based upon the evidence we have seen thus far, we do not believe that the role of AMCs has adversely affected that requirement to justify the sweeping AI proposal.

Over the last twenty-five years, lenders needed to automate and better manage the appraisal process, and AMCs helped to address these business needs. Lenders now frequently outsource the management of ordering, reviewing and delivering quality appraisal products and services to AMCs. AMCs are not appraisers, nor do they perform appraisals. AMCs are agents of lenders and are actually the clients of appraisers under USPAP, acting on behalf of their lender/clients. In fact, AMCs are clients of appraisers, not an extension of them. Therefore, it would be inappropriate and a serious conflict of interest for state appraisal boards, consisting mainly of appraisers, to regulate AMCs.

TAVMA & Appraisal Independence

Previous challenges to AMCs have been primarily focused upon the issue of improper pressure on appraisers, known in the industry as the "appraiser independence" or as the "client pressure" issue. During the last two years, the entire appraisal process has been examined by state and federal regulators and legislators. That scrutiny included AMCs. For example, the thrust of the GSE-NYAC agreement and Code of Conduct was to protect appraiser independence, and it was determined that well run and

"compliant" AMCs could be helpful to the promotion of appraisal independence. TAVMA has been a leading voice for appraisal independence. Consider the following:

- In 2004, TAVMA was among the first industry organizations to adopt a policy concerning inappropriate client pressure on appraisers. In fact, several states have incorporated portions of TAVMA's Position on Client Pressure and Appraiser Independence (See Exhibit 'B') into their own appraiser independence statutes. TAVMA proposed a set of objective criteria, already defined under state laws in every state, to prevent improper pressure on appraisers, including a prohibition of any bribery, coercion or extortion of an appraiser by any person. Similar language has been included in the GSE-NYAG Code, and TAVMA has supported that aspect of the Code.
- AMCs serve as an operational buffer or firewall between lenders and appraisers, which promotes appraiser independence.
- TAVMA is not aware of high complaint numbers against AMCs related to appraisal pressure. In fact, the 2007 October Research Corporation National Appraisal Survey found that appraisers reported significantly higher rates of pressure to adjust appraisal values by mortgage brokers (71%) and real estate agents (56%) than by AMCs, at 25%. Based upon this information, where improper pressure is concerned, appraisers have bigger problems with other loan-related participants, rather than AMCs.
- Therefore, although TAVMA is aware of the appraiser independence issue, it does not require the type of sweeping regulatory proposal made by the AI, at least not for AMCs.
- Finally, it is important to remember that each appraiser is required to provide an objective appraisal report that is free from conflicts of interest and inappropriate requests of any type. And, as described below, the newly adopted GSE-NYAG Code of Conduct, and soon to be adopted federal agency guidelines, will assure that third parties and AMCs do not pressure appraisers.

Other Pending Proposals to Control AMCs and Appraisal Practices

During the last year, the GSE-NYAG Code of Conduct has dominated industry discussions about AMCs and their role in appraisal management. However, that was a unique situation involving one state attorney general. Since the adoption in 1989 of Title XI of FIRREA, federal banking regulators have implemented appraisal law and guidance. In fact, the entire structure of "appraisal law" is a federal matter, with the federal banking regulatory agencies adopting Guidelines for use by regulated institutions in 1994. Those Guidelines are currently being revised by the federal banking regulators, which recently published "Proposed Interagency Appraisal and Evaluation Guidelines." The Guidelines are still pending and open for public comment.

The GSE-NYAG Code has been finalized and was formally adopted by the GSEs on or about December 23, 2008. Both the GSE-NYAG Code and the federal agency appraisal regulations will cover similar issues as those raised by the AI proposal. Basically, the subject matter of the AI's proposal is already covered by the two pending proposals. As stated above, TAVMA believes that the appraisal field is, and has been, controlled primarily by federal law. As TAVMA noted in its written comments about the GSE-NYAG Code, it is unnecessary to "throw-out" the federal appraisal guidelines provided by FIRREA and the federal banking agencies during the last twenty years. Similarly, it would also be inappropriate and unnecessary to have state appraisal boards regulate AMCs.

Summary of the AI Proposal

The AI's proposed Model Act would provide a basic framework for use by the various state appraisal boards in registering and regulating AMCs. The registration process would require:

- basic information about each AMC, with office address and contact person(s);
- hiring and training controls and certifications for AMC employees;
- a one-year 'license" for each AMC to operate in the state, and an annual fee;
- a 'consent to service of process' for litigation purposes; and
- contain four (4) exemptions for certain types of non-AMC usage of appraisers and minimal use of appraisers by AMCs (less than 10 appraisal orders per year).

The proposal has new approval standards for the owners and "controlling persons" of AMCs, within the state Board's discretion. It also contains new requirements for AMC certifications as to USPAP compliance, appraiser panel management and quality control in general by AMCs. State appraisal boards would have apparent authority to review and publish AMC fee schedules. They would also have the right to charge AMCs with violations of the new regulation(s), to hold formal, due process hearings and to 'censure' AMC violators. The exact nature of such a "censure" is not clear from this draft of the AI's proposal.

TAVMA Position

Although the AI proposal is overly broad, much of its content is similar to the pending GSE-NYAG Code of Conduct and federal agency regulations. There has been no factual basis established, or a demonstrated need, for most of the detailed requirements contained in the AI proposal. However, much of the AI proposal would unnecessarily regulate AMCs beyond reasonable limits.

TAVMA believes that the key issue presented to AMCs in this and similar proposals is appraisal independence. TAVMA continues to support reasonable regulation and/or a certification process to address this issue. Further, TAVMA believes that appraisal law and regulation have been, and should remain, primarily a matter of federal regulation and control. State appraisal boards were created under FIRREA to train, certify and license individual appraisers. Most state boards consist primarily of appraisers and their jurisdiction has been limited, thus far, under both state and federal law. TAVMA does not believe that the authority of the state boards should be expanded to new areas of control and regulation.

As stated previously, it would create a conflict of interest for AMCs to be registered or regulated by state appraiser boards. If such registration is needed, it would be more appropriate for AMCs to be registered with a federal agency like the Federal Housing Finance Agency or the Federal Financial Institutions Examination Council ("FFIEC").

Turning to the specifics of TAVMA's possible position, the following points should be considered for discussion:

- The appraisal independence issue is the only real issue that AMCs should address at this time. TAVMA and all AMCs should agree to adopt appropriate controls and industry "best practices" to assure that improper pressure on appraisers does not occur.

- State appraisal boards have an inherent conflict of interest for regulating AMCs. It would also be inappropriate to have such state boards seeking to regulate multi-state operations, like most AMCs.
- If some type of registration is required, it should happen at the federal level. A limited registration and fee ($500) would be manageable for most AMCs. Perhaps the FHFA or FFIEC would be an appropriate agency to manage the AMC registration process.
- Finally, TAVMA should serve an active role in whatever structure or registration process that may evolve from the various pending proposals. One option would be for TAVMA to develop and provide the industry "Best Practices" that will be needed to implement these proposals. Or, beyond that role, TAVMA could serve as a type of industry-wide "Self Regulatory Organization" (an "SRO"), which would implement, manage and enforce any AMC registration process that is finally adopted.

Conclusion

The AI and appraisal industry have lobbied Congress about the appraisal independence issue for years. The current proposal goes far beyond that issue, and will need to be limited in scope before TAVMA should seriously consider supporting it. However, given the developments of the last few years, it seems likely that some type of AMC registration and/or regulation process will be proposed at either the state or federal level.

The various state appraisal boards were delegated the responsibility to certify and license individual real estate appraisers and to supervise their appraisal-related activities. Title XI of FIRREA authorized the various financial institution regulatory agencies to adopt specific regulations to control appraisals made in connection with "federally related transactions," including when appraisals are required, who will perform them, and how the appraisals will be performed. During the last twenty-five years, lenders needed to automate and better manage the appraisal process, and AMCs were created to address that business need. Lenders now outsource the management of ordering, reviewing and delivering quality appraisal products and services to AMCs. AMCs are not appraisers, nor do they perform appraisals. AMCs are agents of lenders and are actually the clients of appraisers under USPAP, acting on behalf of their lender/clients. Therefore, it would be inappropriate and a clear conflict of interest for state appraisal boards, which consist mainly of appraisers, to regulate AMCs.

This discussion has tried to make it clear that any such registration effort should occur only at the federal level and should be assisted or overseen by an industry watchdog, perhaps by TAVMA itself. TAVMA should meet with the AI and other industry organizations to add the AMC perspective to the discussions. TAVMA leadership should adopt a clear position about the issue, so that TAVMA can discuss it with the appraiser industry, regulators and legislators.
