June 24, 2016

Martin Gruenberg, Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Daniel Tarullo, Governor
Federal Reserve Board
20th Street and Constitution Avenue N.W.
Washington, D.C. 20551

Thomas Curry, Comptroller
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, D.C. 20219

Re: Comments on Federally Related Transaction Definition (FRT) Issue

Chairman Gruenberg, Governor Tarullo, and Comptroller Curry:

The undersigned professional appraisal organizations are writing to express deep concern over, and strong opposition to, two positions taken by the FDIC (and, possibly, concurred in by the OCC and the Federal Reserve) that represent an existential threat to the national appraisal regulatory system established over a quarter century ago by Title XI of FIRREA. The first of these positions involves an erroneous reinterpretation of the Title XI term, federally related transaction. The second relates to the recurring increases in the de minimis dollar threshold below which an appraisal is not required; and, the FDIC's stated interest in a new round of such increases. The redefinition of the Title XI term "federally related transaction" would exclude the vast majority (85-90%) of real estate related financial transactions in which the government has a safety and soundness and/or a consumer protection responsibility from the provisions of the appraisal reform law. Under this mistaken interpretation, Title XI's professional appraisal requirements would not apply to the billions of dollars in mortgages guaranteed by FHA, VA and USDA's rural housing program; the mortgages sold to and packaged into mortgage backed securities by Fannie Mae and Freddie Mac; and, even all mortgage originations eligible for sale to the GSEs.

Unless the banking agencies clarify that Title XI applies broadly to most real estate related financial transactions in which the government has an interest – which is what Congress clearly intended - they will be close to achieving an effective repeal of Title XI, not by Congress but by unilateral administrative fiat.

Professional appraisals of the value of properties collateralizing mortgage loans are indispensable to safe and sound loan underwriting and to ensure consumer protections for borrowers. The attached "White Paper" describes the devastating impact of the FDIC's actions on the housing and mortgage markets and explains the many reasons for our belief that the narrow redefinition of FRT and the recurring threshold increases are well beyond the authority of the banking agencies and are contrary to the clear intent of Congress when it enacted Title XI.

A representative of the FDIC recently told a conference of state appraiser regulatory agency officials that contrary to the belief they and all other Title XI stakeholders (in government and in the private sector) have held for 25 years, the law only applies to a very narrow slice of real estate related financial transactions – about 10 – 14%. They were also told that if the banking agencies are successful in further increasing the dollar threshold under which appraisals are not required, only about 4% of all real estate related financial transactions would be covered by the appraisal law. The banking agencies' interpretation of Title XI is contrary to the clear intent of Congress when the law was enacted and contrary to the understanding and the practices of all Title XI stakeholders for decades. Unless successfully challenged, this outcome would mark a return to the mortgage market environment of the pre-FIRREA 1980s, where appraisal practice was unregulated and where faulty and fraudulent appraisals added billions of dollars to the catastrophic losses suffered by the thrift deposit insurance fund – the very outcome Congress determined to prevent from recurring by passing FIRREA in the first place.

We respectfully request that you review the attached White Paper which explains our concerns in detail and discuss the many arguments against the legality and propriety of the banking agencies' positions. We would also greatly appreciate a substantive response to our concerns, which we are also sharing with Congress and with federal agencies which have relied on Title XI for many years. Without a swift and decisive clarification that Title XI applies broadly across real estate related financial transactions, the appraisal regulatory structure that has been relied upon for over a quarter century will collapse, leaving an unacceptable vacuum in its absence. This outcome simply cannot be allowed to happen.

If you have any questions regarding our views, please contact either Peter Barash, Government Relations Consultant to ASA and NAIFA, at 202-466-2221 or peter@barshassociates.com, or John D. Russell, JD, Director of Government Relations for ASA, at 703-733-2013 or jrussell@appraisers.org.

Sincerely,
ASA
NAIFA

CC: Arthur Lindo, Chairman, Appraisal Subcommittee (ASC)
Richard Taft, Vice Chair, ASC
Maria Fernandez, Board Member, ASC
Mira Marshall, Board Member, ASC
Timothy Segerson, Board Member, ASC
Jim Park, Executive Director, ASC
Alice Ritter, General Counsel, ASC

A White Paper on the Federal Banking Agencies' Arbitrary and Capricious Efforts to Exempt the Vast Majority of Federal Real Estate Related Financial Transactions from Title XI of FIRREA's Appraisal Reforms

June 13, 2016

EXECUTIVE SUMMARY

The banking agencies, led by the FDIC, have recently taken the position that the vast majority of real estate related financial transactions in which the government has a safety and soundness or a consumer protection responsibility are exempt from Title XI.[1] They have made clear that under their restrictive interpretation of Title XI's "federally related transaction" phrase, the appraisal law does not apply to or protect the hundreds of billions of dollars in mortgage loans guaranteed by the FHA, the VA or USDA's rural housing program; the mortgages purchased and sold by Fannie Mae or Freddie Mac; and, any originated mortgage which even qualifies for sale to a GSE. This shocking interpretation of Title XI – which places the overwhelming majority of all residential mortgages beyond the law's protections – surfaced and became clear only recently when it was announced by a representative of the FDIC at an April 2016 meeting of state appraiser licensing agencies. As word of the FDIC's Title XI interpretation spread, it stunned federal agencies which have relied for many years on the law's provisions as well as its private sector stakeholders.

The FDIC (and, it seems, the other federal banking agencies) argue that they exempted these transactions in their 1994 Appraisal and Evaluation Guidelines by declaring that they are not "federally related transactions" within the meaning of the law. This position is indefensible and flat-out wrong. As explained in some detail below, the banking agencies' current interpretation of Title XI is directly contradicted by the following facts –

(1) **All Title XI stakeholders disagree:** All Title XI stakeholders at the state and federal levels of government and in the private sector have had a common understanding for 25 years that the law was intended to be broad-based and that it applied to all real estate related financial transactions. This

[1] Under Title XI, the term "real estate-related financial transaction" means "any transaction involving—
(A) the sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof;
(B) the refinancing of real property or interests in real property; and
(C) the use of real property or interests in property as security for a loan or investment, including mortgage-backed securities."

common understanding existed prior and subsequent to issuance of the 1994 Appraisal Guidelines and continues to this day; (See page 7 for more detail)

(2) **The federal banking agencies have never objected, until now, to the broad interpretation of Title XI's reach that the state appraiser licensing agencies, the government's housing and mortgage insurance agencies and the federal Appraisal Subcommittee have observed for decades:** It is important to recognize that while the banking agencies now contend they exempted the vast majority of real estate related financial transactions from Title XI in 1994, they have known for dozens of years that the state licensing agencies and the federal Appraisal Subcommittee were exercising their Title XI responsibilities as applying broadly across government agencies and that the government's housing and mortgage guaranty/insurance agencies had depended on and had benefitted from Title XI's protections – yet the federal bank regulators never objected. They never once told these state and federal entities that their interpretation of the appraisal law was in conflict with their regulatory Guidelines and was, therefore, invalid. The banking agencies' "say nothing, do nothing" stance until now demonstrates that their current interpretation of "federally related transaction" is actually a reinterpretation of the law that is arbitrary and capricious;

(3) The legislative history of Title XI Is conclusive that Congress intended the law to apply broadly across all government housing and mortgage programs: The conditions which gave rise to Title XI as well as its legislative history clearly demonstrate that it was intended by Congress to apply broadly across all real estate related financial transactions involving governmental programs. Moreover, the principal author and the Congressional sponsors of Title XI were acutely aware of the banking agencies' regulatory failures in connection with the 1980s collapse of the thrift industry, including their inattention to the role played by an unregulated appraisal services industry and faulty and fraudulent appraisals which added billions of dollars to the cost of the S&L cleanup. Given this legislative history, it is inconceivable that Congress intended for these same regulatory agencies to have authority not only to rewrite the appraisal reform law but to effectively repeal it for most real

estate related financial transactions, as they are attempting to do and close to doing; (See bottom of page 7 for more detail)

(4) **Subsequent to the 1994 Appraisal and Evaluation Guidelines, Congress enacted major laws that applied Title XI to federal programs that the banking agencies say they have exempted from the appraisal law:** Congress has recently enacted major laws which explicitly extend Title XI to federal housing and mortgage guaranty programs that the banking agencies say are exempt from Title XI because they are not federally related transactions. It is beyond improbable that Congress would enact laws which extended Title XI requirements to federal programs that the banking agencies' claim are not covered by Title XI if Congress didn't believe that these programs are, in fact, covered by the appraisal law. It is absurd to believe that the banking agencies have a better and more authoritative understanding of the intent of Congress when it enacted Title XI than Congress itself; (See page 11 for more detail)

(5) **The exemption provisions of the 1994 Appraisal Guidelines, which the banking agencies now claim excluded most transactions from Title XI requirements, do no such thing. A full reading of the Guidelines makes clear that at the time they were issued, the banking agencies did not exempt the government's real estate related financial transactions from Title XI's <u>enforcement</u> provisions:** The banking agencies' contention that its 1994 Appraisal and Evaluation Guidelines exempted most real estate related transactions from the entirety of Title XI is false. A complete reading of those Guidelines demonstrates clearly that it does no such thing. Apart from the fact that Title XI does not give the banking agencies any exemption authority, the most that can be argued is that the 1994 exemptions only apply to Title XI's appraiser qualifications and appraisal standards provisions (and only if the affected housing and mortgage agencies already had their own comparable appraisal requirements – which they did). The plain language of the 1994 Guidelines makes clear that the exemptions did <u>not</u> apply to Title XI's enforcement provisions (i.e., the state appraiser licensing agencies and the federal Appraisal Subcommittee) – provisions without which there is no realistic way to ensure compliance with the law's substantive requirements. They merely recognized that since these agencies had appraiser qualifications

and appraisal standards comparable to those of Title XI, requiring them to meet the Title XI provisions would be redundant. (See page 9 for more detail)

The points made in this Executive Summary are discussed below and in the pages that follow in more detail.

I. Background of the Banking Agencies' Aggressive Efforts To Restrict the Reach of Title XI

The federal bank regulatory agencies are on the verge of effectively repealing Title XI of FIRREA by taking the position that its appraisal reforms only apply to a tiny fraction of all real estate related financial transactions in which the federal government has a safety and soundness or a consumer protection responsibility. They have done so in two ways: First, by defining a key operative phrase in Title XI ("federally related transaction") in a way that dramatically shrinks the reach of the law; and Second, by approving a series of increases in the de minimus dollar threshold under which a Title XI professional appraisal of residential property is not required: from a $50,000 threshold in 1990 to $100,000 in 1992 and to $250,000 in 2010 (the current threshold). An additional threshold increase to $400,000 or $500,000 is currently being considered by the banking agencies under the EGRPRA regulatory review process.

The FDIC appears to be the lead agency in declaring that Title XI gives the banking agencies unprecedented legal authority to unilaterally dismantle, by administrative fiat, the law they are required to administer as Congress intended. A senior representative of the FDIC told an April meeting of Association of Appraiser Regulatory Officials (AARO) that under its interpretation of the Title XI phrase, "federally related transaction", only about 10% - 12% of all governmental real estate related financial transactions are covered by the law. The FDIC representative also said that if the additional de minimus increase being considered is adopted, the 10% to 12% number would fall to about 4% of all real estate related financial transactions.

Although the conference attendees were startled by the FDIC representative's message (i.e., that their decades old interpretation of what is or is not a federally related transaction was wrong), they were told that they shouldn't be surprised by the pronouncement because the banking agencies exempted most such transactions

from the jurisdiction of Title XI twenty-two years ago in the 1994 Interagency Appraisal and Evaluation Guidelines (see appendix A, exemptions 9 and 10). However, as is made clear in this paper, none of the Title XI government agency or private sector stakeholders – none – understood exemptions 9 and 10 as having the meaning and effect the FDIC now says it does. Moreover a careful and common sense reading of the 1994 Guidelines leads to an interpretation of exemptions 9 and 10 that is very different than – and inconsistent with – the FDIC's current interpretation (also explained below).

II. The de minimus dollar threshold issue

While the focus of this White Paper is on the banking agencies' improper definition of the Title XI phrase, "federally related transaction", the agencies' systematic and arbitrary increases in the dollar threshold below which appraisals are not required (and the prospect of further increases) also severely undermines the effectiveness of Title XI and, we believe, deserves the intervention of Congress. While Title XI does grant the banking agencies authority to increase the dollar threshold if they determine that an increase will not impact the safety and soundness of financial institutions, it should be self-evident that Congress never intended that authority to be exercised in a way that effectively repeals a law whose central purpose affirms and promotes the role of appraisals as the most effective method to ensure the reliability and integrity of collateral valuations for loans ultimately backed by taxpayers. If the banking agencies believe that professional appraisals of properties collateralizing millions of residential mortgage loans that are guaranteed or insured by taxpayers, are an unnecessary component of safe and sound loan underwriting, then it should ask Congress to amend Title XI in a way which explicitly gives them limitless authority to eliminate or marginalize the role of appraisals in the underwriting process. They do not now have this authority.

Given the strongly pro-appraisal policies of the government's housing and mortgage guaranty agencies and given the collapse of the housing and mortgage markets in the 1980s and much more recently, we do not believe that Congress will share the apparent view of the bank regulators that appraisals are a throw-away part of loan underwriting and grant them such authority. Our view is that the current $250,000 threshold for residential loans represents an abuse of the

discretion Congress granted the banking agencies and we respectfully urge Congress to address this matter at its earliest opportunity.

III. The "federally related transaction" Definition Crisis

The banking agencies have made clear that under their restrictive interpretation of Title XI's "federally related transaction" phrase, the appraisal law does not apply to or protect any FHA or VA housing loan guaranty; any USDA rural housing program; any Fannie Mae or Freddie Mac mortgage purchase or sale; and, any mortgage origination that simply qualifies for sale to a GSE. This shocking interpretation of Title XI – which places the overwhelming majority of all residential mortgages beyond the law's protections – surfaced and became clear only recently and stunned Title XI stakeholders, in both the public and private sectors.

The banking agencies' interpretation of the "federally related transaction" phrase, means that neither Title XI's substantive appraisal provisions (i.e., appraiser qualifications and adherence to the Uniform Standards of Professional Appraisal Practice or USPAP) nor the enforcement infrastructure it established (i.e., the state appraiser licensing boards and the federal Appraisal Subcommittee) are available to users of appraisal services or to federal agencies that administer programs dependent on reliable uniform appraisals and on professional appraisers whose work is overseen by the state licensing agencies which credentialed them. Without these state and federal enforcement mechanisms, there is no realistic or cost-effective way to ensure compliance by appraisers and by users of their services with Title XI's appraisal reform provisions or with the appraisal policies of government agencies.

The improbability of the legitimacy of the banking agencies' interpretation is clearly illustrated by the following bullet points:

- **The banking agencies' interpretation is contradicted by the fact that Title XI's stakeholders both in government and in the private sector have believed for 25 years that the appraisal reform law is extremely broad-based. In other words, they are in profound disagreement with the banking agencies' interpretation.**

Federal officials whose agencies administer the nation's housing and mortgage guaranty programs have for decades operated on the basis of their belief that Title XI applies to the programs they administer. Indeed, the appraisal regulations and written policies of agencies such as FHA, VA, USDA, FHFA and the GSEs are filled with references to and reflect a dependence on Title XI, including the enforcement mechanisms it established in the form of the state appraiser licensing agencies and the federal Appraisal Subcommittee. These agencies are responsible for ensuring that valuations for federal purposes are performed by state certified or licensed appraisers who are accountable to their state licensing boards for their professionalism. Without the backup of Title XI's enforcement provisions, each of these agencies and enterprises – which rely greatly on the services of state licensed and certified appraisers – would be required to establish their own qualifications requirements for individuals who wish to provide them with collateral valuation services; to establish testing protocols to ensure that applicants meet the qualifications requirements; and, to create their own enforcement and sanctions mechanisms – functions which if not available through the Title XI structure would cost taxpayers tens or hundreds of millions of dollars to create and administer themselves.

- **The banking agencies' interpretation of their powers to restrict the reach of Title XI is sharply contradicted by the legislative history of the law and by strong indicators of Congressional intent that it should operate broadly across government housing and mortgage market programs**

The banking agencies' actions are unambiguously contrary to the legislative history of Title XI and to Congressional intent. What Congress intended as a robust appraisal reform law designed to protect broad federal programs and interests, is close to becoming a nullity.

The agencies have falsely determined that Congress intended for Title XI's appraisal reform provisions to cover only an insignificant fraction of government housing and mortgage programs – a far-fetched and even preposterous assertion given that the law was an important component of Congress's aggressive overall legislative response to the banking agencies egregious regulatory failures relative to the collapse of the S&L industry in the 1980s. One of the most serious of those

regulatory failures was the banking agencies lack of attention to the flood of poor quality appraisals that were used by lenders to make thousands of bad real estate loans appear to be adequately collateralized; and, to the billions of dollars in added losses to the federal deposit insurance system caused by an unregulated appraisal services industry and by faulty and fraudulent appraisals.

The enactment of Title XI was a direct result of and reflected information gathered at more than a dozen Congressional oversight hearings which broadly examined the role of faulty real estate appraisals on a wide range of federal interests. The subject matter of these hearings involved not just the collapse of the S&L industry and the billions of dollars in losses to the FSLIC resulting from faulty and fraudulent appraisals of collateral properties but also the negative effects of poor quality appraisals on the government's home loan guaranty programs (i.e., FHA and VA) and the mortgage purchase and secondary market activities of Fannie Mae and Freddie Mac. Many other federal agency programs which rely to some extent on real property valuations were also examined during the hearings, including rural housing and multi-family programs. The provisions of Title XI were intended by its sponsors and by Congress to apply broadly to all real estate related financial transactions where the reliability of property appraisals had always been important to the mission of the agencies administering them.

Given this history, it is beyond improbable that Congress intended Title XI's appraisal reforms to only apply to an insignificant slice of federally related transactions in situations where reliable valuations of collateral property are an important component of safe and sound mortgage loan underwriting. It is equally improbable that Congress would entrust the banking agencies with carte blanch authority to dismantle the law by administrative fiat.

Importantly, since its enactment in 1989 and notwithstanding the highly restrictive interpretation of the law by the banking agencies, all Title XI stakeholders, both in government and in the private sector, have regarded the law as applying to a broad range of real estate related financial transactions in which the government has a safety and soundness or a consumer protection responsibility. This includes the entire community of professional appraisers; all the state appraiser licensing agencies; the federal Appraisal Subcommittee; the real estate, mortgage and housing industries; <u>and, critically, Congress itself</u>. This commonly held belief

continued after issuance of the 1994 Interagency Guidelines which purported to exempt most real estate related financial transactions from the law; and it continues to this day.

Nevertheless, the FDIC representative's assertion at the recent AARO meeting that 85 - 90 percent or more of real estate related financial transactions are exempt from Title XI has caused great consternation and confusion at the state appraiser licensing agencies and among other Title XI stakeholders. They were also told that this pronouncement should not come as a surprise because the banking agencies exempted these transactions in the Appraisal & Evaluation Guidelines they issued in 1994 – 22 years ago.

- **The banking agencies' current explanation of what was intended by exemptions 9 and 10 in the 1994 Appraisal and Evaluation Guidelines is inconsistent with – and contrary to – the full text of the Guidelines**

The FDIC's recent explanation of the purpose and effect of exemptions 9 and 10 is inconsistent with the full text of the 1994 Guidelines as well as the text of the current Guidelines which were issued on December 2, 2010. Section VII of these Guidelines entitled "Transactions That Require Appraisals" states: "Although the Agencies' appraisal regulations exempt certain real estate related financial transactions from the appraisal requirements, **most real estate related financial transactions over the appraisal threshold are considered federally related transactions and, thus, require appraisals.**" (Emphasis added).

This declaration stands in stark contrast to the FDIC's current position that most transactions are not federally related transactions.

As further evidence that the banking agencies' current interpretation of "federally related transaction" is actually a reinterpretation that is clearly erroneous, consider that the commentary accompanying the 1994 and the 2010 Guidelines relating to the exemptions makes clear that they only relate to Title XI's appraiser qualifications and appraisal standards requirements if the loan guaranty agencies and the secondary market enterprises already have comparable requirements – which they did. The exemptions in the Guidelines do not create an exemption from Title XI's enforcement provisions (i.e., the state licensing agencies and the federal Appraisal Subcommittee) and were never intended to do so. A reading of the plain

language of the exemption provisions of the Guidelines makes this conclusion certain:

> **"9. Transactions Insured or Guaranteed by a U.S. Government Agency or U.S. Government-Sponsored Agency**
>
> This exemption applies to transactions that are wholly or partially insured or guaranteed by a U.S. government agency or U.S. government-sponsored agency. The Agencies expect these transactions to meet all the underwriting requirements of the Federal insurer or guarantor, including its appraisal requirements, in order to receive the insurance or guarantee. (Emphasis added)
>
> **10. Transactions That Qualify for Sale to, or Meet the Appraisal Standards of, a U.S. Government Agency or U.S. Government-Sponsored Agency**
>
> This exemption applies to transactions that either (i) qualify for sale to a U.S. government agency or U.S. government-sponsored agency,[43] or (ii) involve a residential real estate transaction in which the appraisal conforms to Fannie Mae or Freddie Mac appraisal standards applicable to that category of real estate. An institution may engage in these transactions without obtaining a separate appraisal conforming to the Agencies' appraisal regulations. Given the risk to the institution that it may have to repurchase a loan that does not comply with the appraisal standards of the U.S. government agency or U.S. government-sponsored agency, the institution should have appropriate policies to confirm its compliance with the underwriting and appraisal standards of the U.S. government agency or U.S. government-sponsored agency." (Emphasis added)

It is unsurprising, therefore, that all the federal, state and private sector stakeholders understood that the so-called exemptions found in the 1994 Guidelines related only to the Title's appraiser qualifications and appraisal standards provisions based on the fact that these agencies' own appraisal requirements were comparable to those in Title XI. Applying Title XI's appraiser qualifications and appraisal standards provisions would have been redundant. None of the federal agencies believed or had reason to believe that the appraisers and appraisals utilized in connection with their programs were exempt from the enforcement authority of the state appraiser licensing agencies and the federal Appraisal Subcommittee. Nor did any of the private sector stakeholders involved in mortgage loans guaranteed or insured by government agencies or enterprises believe that the 1994 Guidelines exempted them or their transactions from the entirety of Title XI.

Title XI stakeholders understood that exemptions 9 and 10 in the Guidelines were nothing more than an acknowledgement that the FHA, VA, FHFA, USDA and the GSEs already had in place substantive appraiser qualifications and appraisal standards that were equivalent to, or strong than, those established in Title XI; and that applying Title XI's substantive requirements was unnecessary.

- **The banking agencies current interpretation of "federally related transaction" is directly contradicted by the enactment of laws subsequent to 1994 that extended Title XI to transactions the FDIC now says are outside the scope of Title XI because they are not federally related transactions**

Consider, for example, that in 2009, the Housing and Economic Recovery Act directed that "any appraiser chosen or approved to conduct" FHA appraisals must hold a state certified appraiser credential (previously, licensed appraisers were eligible to perform FHA-related valuations). It is extremely difficult to understand why Congress, in 2009, would legislate an improvement in FHA's appraisal requirements if Congress believed that 15 years earlier the banking agencies had exempted FHA's loan guaranty programs from the authority of the state licensing agencies established pursuant to Title XI to credential appraisers and oversee their professionalism; and exempted FHA's appraisers from the indirect authority of the federal Appraisal Subcommittee. Federal programs which rely on the services of state certified or licensed appraisers are tied into and depend upon Title XI (in some cases to establish appraiser qualifications and appraisal standards if the agencies don't already have them) but always in connection with the Title's enforcement mechanisms which ensure the integrity and uniformity of federally-related valuations.

Consider what <u>each</u> federal agency utilizing the services of certified and licensed appraisers would have to do if their programs were exempt from Title XI: Each agency would be forced to establish their own qualifications and standards requirements for their appraisers; each would be required to test and approve or deny eligibility to those wanting to perform appraisals for the government; each would be required to create teams of investigators to review complaints of appraiser incompetence or misconduct; and, each would have to establish their own sanctions regimes for alleged misconduct or negligence including due process

protections. In short, each federal agency with a need for appraisal services would have to duplicate systems which are already in place pursuant to Title XI. This would cost taxpayers tens and possibly hundreds of millions of dollars.

Also consider that in 2010, Congress enacted Dodd-Frank which included numerous important changes to Title XI's appraiser certification and licensing system that directly impact appraisals performed for the government's principal housing and loan guaranty programs – programs which the FDIC now claims are not even subject to Title XI because they are not federally related transactions.

For example, Dodd-Frank's appraisal provisions strengthen Title XI's appraiser independence provisions by prohibiting acts and practices which seek to improperly influence an appraiser's opinion of value and by requiring that appraiser's be paid customary and reasonable fees. Dodd-Frank also amended Title XI by requiring state appraiser agencies to regulate Appraisal Management Companies (through which most appraisal engagements are ordered by mortgage lenders); by mandating that the federal Appraisal Subcommittee award grants to state licensing agencies so that they can more effectively investigate complaints filed against their appraisers; by establishing an appraisal complaint hotline to enhance the enforcement powers of state licensing agencies; and, by giving the Appraisal Subcommittee explicit authority to engage in rulemaking on issues central to the effective functioning of the system Title XI created.

<u>If Members of Congress shared the FDIC's view that only about 10% of all real estate related financial transactions are federally related transactions covered by Title XI, they never would have devoted the time and effort necessary to enact such far-reaching Title XI changes</u>.

Moreover, virtually all of the appraisal authority and requirements established by Congress in the Housing and Economic Recovery Act of 2009 and in the Dodd-Frank Act of 2010 would be a nullity if the FDIC's reinterpretation of Title XI were allowed to stand. Whose judgment should prevail on the issue of Congressional intent with respect to whether Title XI was intended to operate broadly across government programs or narrowly: Congress itself or the banking agencies? The question answers itself.

IV. Additional Points for Clarification Purposes

- Title XI was constructed in two interdependent ways to safeguard federal interests: First, it established substantive requirements to ensure appraiser competency, independence and accountability and mandated appraiser adherence to the uniform standards of professional appraisal practice (USPAP); and, second, it established an institutional framework to ensure and enforce compliance with appraiser qualifications and uniform appraisal standards. This institutional framework is composed of appraiser licensing agencies (in the 50 states, four territories and DC) which test and license professional appraisers and can sanction them based on a finding of negligence or unethical behavior; and, a federal Appraisal Subcommittee (which is a part of the Federal Financial Institutions Examination Council or FFIEC) to oversee the licensing agencies to ensure their diligence and effectiveness. Without this institutional framework, Title XI's substantive requirements would exist in a vacuum without the ability to be enforced;

- State laws establishing real estate appraiser licensing agencies pursuant to Title XI of FIRREA generally limit the authority of these agencies to "federally related transactions" performed within the state. As a result, transactions exempted from Title XI by the federal banking agencies are largely beyond the scope of the authority of most state appraiser licensing agencies and entirely beyond the scope of the authority of the federal Appraisal Subcommittee which oversees the effectiveness of the state appraiser licensing agencies. While states with laws that mandate the use of licensed or certified appraisers for all transactions within their state might be able to exercise some authority over exempted transactions, the extent of their authority over non-federally related transactions has never been tested. Moreover, if 85 – 90% of transactions occurring in a state are no longer considered federally related transactions by the banking agencies, the legislatures in these states would be tempted to amend their appraisal licensing laws to restrict the activities of their appraiser licensing agencies just to federally related transactions and pare their budgets accordingly. This is a likely scenario because the impetus to establish state appraiser licensing agencies in the first place resulted from the enactment of Title XI and the

belief that the vast majority of real estate related financial transactions occurring in the states were federally related transactions. If most are now deemed not to be federally related transactions, many of these appraiser licensing agencies would be shut down or their activities substantially curtailed.