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To: Economic Affairs Interim Committee

From: Montana Board of Real Estate Appraisers

Date: June 10, 2013

Subject: HB525 – REA response to the Economic Affairs Interim Committee questions

**1. What is the public health, safety or welfare rationale for licensing and regulating your profession/occupation?**

The Health safety and soundness of the federally insured depositories and lending institutions that rely upon accurate and credible real estate appraisals for their lending decisions. It is a Federal mandate for the States to oversee the licensing of real estate appraisers whose competency has been examined and ensure that appraisers have effective supervision.

**2. If your profession/occupation were not licensed, what public protection would be lost?**

In essence, the United States Congress has mandated that only appraisers who are certified and licensed may perform appraisals for federally related transactions. Without licensing or the oversight of real estate appraisers, Montana would not be allowed to provide appraisals from certified appraisers. No federally related transactions would be able to completed without the licensing and oversight required by Congress. Real Estate Appraisers are subject to oversight by the Appraisal Subcommittee. Congress has given the ASC authority over the states appraisal programs to ensure compliance with Title XI of FIRREA and the Dodd/Frank Financial Reform bill.

Title XI of FIRREA (Financial Intuitions Reform, Recovery and Enforcement Act of 1989 Real Estate Appraisal Reform [12 U.S.C.3331-3351] The purpose is to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisal utilized in connection with federally related transaction are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

The Appraisal Subcommittee [12 U.S.C. 3332] shall monitor the requirements established by the states-

- (a) For the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility; and
- (b) For the registration and supervision of operations and activities of an appraisal management company.

**3. If a license is necessary (for health, safety, or welfare), does the profession/occupation need a board for oversight? If yes, please explain why and describe the purpose of creating a board.**

Federal requirement to license individuals whose competency has been demonstrated and provide effective supervision over real estate appraisers was mandated by Title XI [12 U.S.C.3331-3351].

[12 U.S.C. 3346]

To ensure the availability of State certified and licensed appraisers for the performance in a State of appraisals in a federally related transactions and to assure effective supervision of the activities of certified and licensed appraisers, a State may establish a State appraiser certifying and licensing agency.

**4. Does your board deal with unlicensed practice issues? If yes, what types of issues?**

The board does not have many issues with unlicensed practice with unlicensed appraisers because a federally related transaction prepared for a federally insured depository requires a licensed or certified appraiser. The federally insured depository (Financial Institution) is required to ensure that the appraiser is licensed or certified for the appraisal work.

The Board also licenses Appraisal Management Companies. Since Montana licensed or certified appraisers cannot accept an appraisal assignment from an unlicensed AMC, the unlicensed AMC has not happened yet.

**5. People who are not licensed but are qualified in an occupation or profession may feel that a licensing board is preventing them from earning a living -- what is your response?**

The Montana Board of Real Estate Appraisers must ensure compliance with the Federal Requirements for educational qualifications and for experience. The minimum requirements for education and experience are the same in all 50 states and 4 jurisdictions. The Montana board cannot be less stringent in their requirements for licensure that the federal guidelines.

Montana is a non-mandatory state as it relates to the licensure of real estate appraisers. If an individual is doing appraisals that are not for federally related transactions, they may do so. The individual may not identify themselves as licensed or certified.

**37-54-201. Real estate appraiser license -- scope and display of license.** (3) This chapter does not preclude a person who is not a licensed or certified real estate appraiser from appraising real property

for transactions not related to a federal agency or project for compensation if the person does not purport to be a licensed or certified real estate appraiser. A person who purports that the person or the person's company is licensed under this section or certified under [37-54-302](#) and [37-54-303](#) without possessing the applicable license or certificate is guilty of a misdemeanor.

(4) This section does not:

(a) prohibit a person who is licensed to practice in this state under any law from engaging in the practice for which the person is licensed;

(b) apply to public officials in the conduct of their official duties that are not governed by the rules established by the federal financial institutions examination council agencies.

(5) A licensed or certified real estate appraiser is subject to restrictions on the scope of practice, depending on the value and complexity of the federally related transaction or transactions pursuant to rules established by the federal financial institutions examination council agencies, and the restrictions must remain current with any changes in those rules.

**6. How does your board monitor bias among board members toward a particular licensee, an applicant, or a respondent (to unlicensed practice)? How does your board monitor bias toward a particular profession/occupation, if more than one profession or occupation is licensed by the board?**

The Montana Board of Real Estate Appraisers is made up of 7 members, 5 real estate appraisers and 2 public members. The Board has given department staff the authority to reviews the educational requirements as mandated by the Title XI and the Appraisal Qualifications Board.

The Board reviews an applicant's work product. The work product is chosen by the only appraiser staff member, not the board. The work product is required to be reviewed in accordance with strict ethics and professional code requirements. The board is setting in judgment of the work product and not the individual person, this system of review prevents bias from being present.

**7. Does the profession or occupation have one or more associations that could provide oversight without the need for a licensing board? Why not use the association as the oversight body?**

The appraisal associations are primarily educational providers and are not set up for the oversight of real estate appraisal practice issues. The Federal requirement is for States to provide "effective supervision" of appraisers.

**8. Is a licensing board needed in order for the practitioner to bill to receive insurance (for example, health insurance)? If so, is there an alternate method for billing that may be recognized rather than having a license or being regulated by a licensing board?**

No.

**9. What are the benefits of a board being part of the licensing and discipline process instead of the department handling one or both?**

The minimum educational requirements are handled by the department staff. The qualifying experience requirements must meet the minimum development and reporting requirements of the Uniform Standards of Professional Appraisal Practice and any additional assignment conditions from the secondary market participants. This requires review of the work product. The board members are peers of those they license. The board members understand the appraisal practice and weigh the strengths and weakness of the work product presented for licensure. In addition to the Boards review, the Appraisal Subcommittee reviews the boards decisions for licensure to ensure compliance with national licensing criteria as established by Title XI [12 U.S.C.3331-3351]

The appraiser board members are a wealth of knowledge in identifying how the Montana laws and rules affect the practice of appraisers in the field. The board reviews all complaints and has unique insight as to the acceptable appraisal practice. The need for additional investigation into standards and practices is sent to a Certified Appraiser investigator.

**10. Is there an optimum ratio between licensees, board size, or public representation?**

No. The board of real estate appraisers consists of 7 members, 5 appraiser members and 2 public members. Originally the board consisted of 5 members, 4 appraiser members and 1 public member. There has not been any recognizable difference in the effectiveness of the board with the increased membership.

**11. If a board's purpose includes protecting public welfare, would that consumer protection be handled better by the Attorney General's office than by a board? (In other words, is there a value in a disinterested third party? If yes, why? If not, why not?) Who should be responsible for monitoring fraud within the profession or occupation?**

The Attorney General's office would need additional expertise of certified appraisers on staff to set in judgment of work product. There is a Federal requirement to verify education, experience or expertise to review work product by applicants that must meet Federal requirements, The Uniform Standards of Professional Appraisal Practice requirements, assignment conditions mandated by the Veterans Administration, Housing and Urban Development, Fannie Mae and Freddie Mac. Under the Federal Mandate of Title XI and Dodd/Frank Financial Reform Bill to provide effective supervision would require the Attorney General's office to hire the same staff as required by the Department of Labor.

The board is the first entity to identify fraud in appraisal work product through its complaint process.

**12. If boards have overlapping scopes of practice, should there be a third-party to determine whether there is intrusion into the other's practices? If so, who should be the judge? If not, why not? Should each be allowed to operate on the other's turf without repercussions?**

The legislature should be the judge. Each board always has the opportunity to bring these issues via proposals for new regulations to the committees of the legislature.

**13. Should any board have the ability to limit use of certain terminology to only a licensee?**

Yes. Only a licensed and certified real estate appraiser may sign an appraisal report for a federally related transaction.

**37-54-301. Certification -- use of term -- standards of practice.** (1) A person may not represent to the public that the person is a certified real estate appraiser unless the person is certified under this chapter.

(2) Only a certified real estate appraiser may prepare and sign a certified appraisal report relating to real estate or real property in this state. If an appraisal report is prepared, signed, and certified by a certified real estate appraiser, a person licensed under this chapter who assisted in the preparation of the appraisal may cosign the appraisal report.

(3) The term "certified real estate appraiser" may not be used to describe a firm, partnership, corporation, group, or anyone other than an individual certificate holder. However, a certified real estate appraiser may develop and communicate an appraisal on behalf of a firm, partnership, corporation, or group.

(4) Whenever an appraisal or appraiser report is identified by the certified real estate appraiser as "certified", the appraiser shall indicate in writing the class of certification the appraiser holds.