

**Oppose HB 2501 – Appraisal Management Companies;
Reasonable & Customary Fees; Evaluations**

February 27, 2017

Chairman Holvey and Members of the Business & Labor Committee, the Appraisal Institute (AI) is **opposed to the passage of HB 2501**. AI is a global professional association of real estate appraisers, with nearly 19,000 professionals in almost 60 countries throughout the world. Its mission is to advance professionalism and ethics, global standards, methodologies, and practices through the professional development of property economics worldwide.

As currently drafted, Section 3 of HB 2501 would require that the Oregon Appraiser Certification and Licensure Board (ACLB) adopt rules “establishing the payment rates for independent contractor appraisers”. In establishing this “fee schedule”, the ACLB would be required to take into consideration academic studies, independent private sector surveys, and any other factors affecting compensation rates.

There are a number of issues with HB 2501 which make it fatally flawed and unfit for passage. First and foremost is that Section 3 is in direct conflict with federal law which dictates how lenders and their agents are required to determine the reasonable and customary fees that are paid to independent fee appraisers. Under federal law, there are two presumptions of compliance. So long as a lender or an AMC can demonstrate that they have utilized one of the presumptions of compliance, then they are presumed to comply with the requirements. Importantly, federal law preserves the market – rather than any fee schedule - as the primary determinant of what constitutes a reasonable and customary fee. Federal law does, however, impose the responsibility for the payment of reasonable and customary fees upon lenders and their agents, and we are supportive of the federal requirements. Under the Supremacy Clause of the U.S. Constitution, states are not allowed to enact laws which conflict with federal law and make it impossible for an entity to comply with both laws simultaneously.

There are other issues with HB 2501. We do not believe that the ACLB has the financial and staff resources, nor the expertise, to be able to adequately develop the required fee schedule with any degree of accuracy and reliability, and to keep it updated on a regular basis. In addition, we do not believe that a government agency should be put in the position of establishing a fee schedule, and that the market should be the primary determinant of the fees that are paid to independent fee appraisers – within the guidelines established by federal law. Lastly, the provisions of HB 2501 would apply only to AMCs and it fails to recognize the large number of transactions where financial institutions directly engage appraisers.

In addition, Section 6 of HB 2501 would permit persons other than employees, including real estate brokers, accountants, financial analysts, etc. to prepare evaluations for financial institutions for use in lending transactions when an appraisal by a state-certified appraiser is not required by federal law. We believe that current law is in place to protect Oregon’s citizens when entering into complex financial transactions, and we do not believe that any change is currently warranted to expand the scope of providers who are permitted to provide evaluation services to those that may not be competent and qualified to perform those services.

While we are opposed to HB 2501 in its current form, we would like to begin a dialogue with all stakeholders regarding giving the ACLB some authority to adjudicate complaints against AMCs in relation to alleged violations of the federal requirements for the payment of a reasonable and customary fee. This is something that has been accomplished effectively in many other states. In addition, we would like to have a conversation with the legislature about changing the law to permit state-licensed and state-certified real estate appraisers to be able to perform evaluation services. Our feeling is that there is no party better positioned to provide evaluation services than a competent and qualified real estate appraiser. Unfortunately, appraisers are currently precluded from providing evaluation services because they are required to follow USPAP. We look forward to the opportunity to have these discussions with all stakeholders and hope to have some legislation ready for consideration in 2018-2019.

Unfortunately, HB 2501 is fatally flawed as it is currently drafted and the AI strongly urges you to vote in opposition to this legislation.

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