

August 2, 2010

Ms. Elizabeth M. Murphy  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: "Asset-Backed Securities" File Number S7-08-10

Dear Ms. Murphy:

On behalf of the 26,000 members of largest professional association of real estate appraisers in the United States, we welcome the opportunity to comment on the Securities and Exchange Commission's ("SEC") April 7, 2010 Proposed Rule on *Asset-Backed Securities*.

The Appraisal Institute supports the intent of SEC's proposal, in particular efforts to increase transparency and investor understanding of loan and property level information. In this regard, there is a tremendous amount of information contained in real estate appraisals today that is underutilized by investors. Armed with this information, investors may have a better understanding of underlying assets found in financial instruments and their accompanying risk.

We are particularly supportive of increasing awareness and information about appraisal and valuation related information in the Proposed Rule, including information about the competency level of the service provider. The Appraisal Institute currently confers the MAI and SRA designations, with the MAI being held by appraisers who are experienced in the valuation and evaluation of commercial, industrial, residential and other property types. In addition to a four-year college degree and 4,500 hours of specialized experience, candidates for an MAI must receive credit for a demonstration appraisal report on an income producing property, whereby they defend an original appraisal report before their peers. The requirement to defend an appraisal before one's peers through a demonstration report is but one reason the MAI designation has long been recognized by courts of law, government agencies, financial institutions and investors as marks of excellence in the field of real estate valuation and analysis<sup>1</sup>. As such, we urge the SEC to retain the distinction between Certified MAI appraisals and non-certified appraisals in Table 1, Schedule L Item 3, entitled, "Commercial mortgages item requirements"<sup>2</sup>.

We offer the following as suggestions for improvement. Currently, the Proposed Rule includes recognition to broker price opinions in the valuation type of both commercial and residential mortgages. While BPOs may have a role to play in asset management and disposition where allowed by state law, their use in loan origination is highly suspect, in our opinion. The recently enacted Dodd-Frank financial reform bill prohibits BPOs from being used as the primary basis of valuation in loan

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<sup>1</sup> In *Schwartz v. Commissioner* (2009), the United States Tax Court affirmed "Within the real estate appraisal community MAI is viewed as the highest regarded appraisal designation." Available at <http://www.lexisone.com/lx1/caselaw/freecaselaw?action=OCLGetCaseDetail&format=FULL&sourceID=gdi&searchTerm=eYGj.Hjaa.UYGY.fccT&searchFlag=y&lloc=FCLOW>

<sup>2</sup> Found on page 586 of the proposed rule. Available at <http://www.sec.gov/rules/proposed/33-8419.htm>

origination, codifying pre-existing policies found at Fannie Mae, Freddie Mac and the Federal Housing Administration. Some have argued the use of BPOs is acceptable under recent loan modification programs; however, it is our understanding that many loan modifications are also considered new origination under many situations, including when a new mortgage note is issued, interest is capitalized in the new loan, etc. Under these circumstances, any BPO used as a valuation service in a loan modification could be classified under the field entitled, “most recent property valuation type” rather than “original property valuation type.” Further, the Federal Reserve Board staff has indicated that commercial BPOs do not satisfy the definition of an “evaluation,” which is what is allowed in lieu of an appraisal where none is required under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act. As a result, we suggest that references to BPO be struck from any references to “original property appraised (or valuation) type” in either residential or commercial mortgage titles or definitions.

We also suggest the final rule capture data on periodic updating and monitoring of commercial real estate assets. While the proposed rule captures subsequent valuations conducted in on residential properties it does not do so for commercial mortgages. Periodic (annual) appraisal and evaluation “updates” of commercial real estate are commonly performed by our members under investor, management, and institutional requirements. To address this, we suggest a field be added to the commercial mortgage sequence that would capture the original appraised value and any subsequent valuations (“most recent property valuation”).

Lastly, investors may also benefit from having information relating to the Metropolitan Statistical Area/CBSA Identification Number, the valuation history (all valuation services over the life of the loan), and the subject “DNA,” such as the gross living area, room count, construction style, etc. We understand these fields are commonly analyzed by investors today and may already be found in industry developed standards such as Project RESTART.

Overall, we are very supportive of the proposed rule. We believe enhanced transparency and objectivity of underlying asset information is a critical element to restoring the trust of investors and warding off future financial crises. We stand committed to working with you to assist with this highly important endeavor.

Thank you for the opportunity to comment on the Proposed Rule. Should you have any questions or need additional information, please contact Bill Garber, Director of Government and External Relations, Appraisal Institute, at 202-298-5586 or [bgarber@appraisalinstitute.org](mailto:bgarber@appraisalinstitute.org), or Brian Rodgers, Manager of Federal Affairs, Appraisal Institute, at 202-298-5597 or [brodgers@appraisalinstitute.org](mailto:brodgers@appraisalinstitute.org).

Sincerely,

Appraisal Institute