JAMES A. GRAASKAMP COLLECTION OF TEACHING MATERIALS

V. INDUSTRY SEMINARS AND SPEECHES - SHORT TERM

G. Miscellaneous Company Lectures

10. "Changing Concepts of Appraisal for Institutional Lenders Affecting the Development Process", sponsored by Ferguson & Burdell, circa 1987-88

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CHANGING CONCEPTS OF APPRAISAL FOR INSTITUTIONAL LENDERS AFFECTING THE DEVELOPMENT PROCESS

Presented by
Professor James A. Graaskamp
University of Wisconsin School of Business

A Breakfast Seminar Sponsored by
FERGUSON & BURDELL
Seattle, Washington

I. Historically developers, lawyers, and appraisers have not worked together well as professional equals. Developers, lawyers, and lenders have preferred appraisers who are "reasonable", that is to say controllable.

A. Both the process and purpose of an appraisal for new development and related financing requires advocacy by the appraiser, disinformation for the files of the lender, and fee structures based on contempt for the research process.

B. These institutional realities will now cause the S & L industry to lose $25 - $50 billion, about the same for the banks, and probably the same amount in the loss of phantom equities for syndications and joint ventures. It is small exaggeration to believe that the difference between solvency and insolvency of at least a thousand of our financial institutions is probably 100 basis points on the cap rates used to value their interest in distressed real estate.

C. The Congress of the United States will soon vote on HR-3675, the Real Estate Appraisal Reform Act of 1987 proposed by Congressman Douglas Barnard, a former banker, that would impose standards and certification on anyone dealing with a federally insured institution or in a matter of significant public policy. (Exhibit 1 & 2)

D. The professional appraisal societies are embarrassed and are proposing stringent new standards and a certification program which could take five-ten years to implement.

E. The Financial Accounting Standards Board is under pressure from international finance groups as well as the SEC to deal with the need for common appraisal definitions and the appraisal relationship to accounting.

1. The European Common Market and the Royal Chartered Surveyors have made significant progress in defining different values as benchmarks for different purposes, particularly for financial statement reporting of fixed assets.

2. FASB has detailed rules distinguishing a forecast from a projection. Given the emphasis on valuing cash flows over time, the accountants are taking control of commercial property appraisal. (Exhibit 3)

3. The appraisers want to regain bargaining leverage with their clients by establishing an appraisal standards board modeled after the CPA format.

4. The shift of major properties into institutional, non-taxable ownership means that the sophistry of income tax accounting for assets is gone and the emphasis will be on economic accounting for land and building productivity on real estate tax matters.

F. All of these factors indicate that developers and their lenders will lose control of the appraisal process and the appraiser. The appraiser will become an advocate of the public interest as a check and balance on a lending system which is anti-appraisal, pro-transaction, and biased toward credit enhancement and credit relationships rather than collateral assets.

II. The late lamented R-41C introduced discipline on a number of concepts which will reapperr to haunt the developer and the lender such as

A. Cash equivalent value

B. Value as is

C. Exit value at completion before rental

D. Value added by marketing

E. Value allocated to the fee as encumbered, the leasehold value, value created by intangible personal property such as seller financing or other business arrangements, and value added by personal property

F. Empirical support of absorption rates and project capture rates

G. Investigation of terms of sale and other conditions behind comparative market data with full documentation of adjustments

H. The appraiser will be selected and paid for by the lender with a charge back to the borrower on a non-refundable fee. The appraiser is liable under privity of contract and biased to the position of the lender.

I. Signature of loan officer indicating concurrence with appraisal and its critical assumptions

III. It is interesting to note that Dennis Wall, Chairman of the Federal Home Loan Bank Board, is being roasted by Congress, the appraisal societies, and the investment banking world for having trashed 41C rather than correcting its problems.

A. He alleged it was necessary because of The Competitive Equality Banking Act of 1987 that required the S & Ls fall back to the bank's position on appraisals. Further he claimed it was too expensive and therefore not cost effective - after losing $25 billion doing it his way.

B. Congress and the appraisal societies were quick to point out that banks didn't have an appraisal standard.

C The investment banking industry pointed out that it was unworkable to have every institution establishing their own appraisal standard if there was to be a secondary market for commercial loans.

D. The FSLDIC pointed out that it was unworkable to train auditors to review appraisal quality if there was a different set of standards for each institution.

E. Congress has commented privately that they could have the federal agencies dump all foreclosed properties to clear the inventory if NAHB, NAR, and the mortgage bankers don't stop interfering with establishment of appraisal standards and certification.

IV. The concept of distributable cash and cash flow financing has arrived to change the pro forma format of all rental property, not to mention the format for land development alternatives.

A. Definitions of revenue and expenses have changed to parallel the simplified presentation and Exhibit 4.

B. Property management defines execution of existing contracts while asset management is concerned with the purchase of future revenue contracts and those costs must be subtracted before defining distributable cash to which debt service ratios are then applied.

C. Investment returns are now computed on distributable cash relative to total cash outlays as indicated in Exhibit 3 and forecasts are distinguished from projections. It is unethical to circularlize cash flows based on hypothetical assumptions which cannot be supported from current conditions if those making the projections are not available to explain their work product.

D. As real estate finance for commercial devel-pment is detached from the local scene and more dependant on national capital markets and securitization, two conflicting elements come into play:

1. The investment banker is responsible for due diligence including careful review of appraisals or doing their own appraisals.

2. Collateral emphasis shifts to credit enhancement where the national guarantor has no previous relationship with the borrower and therefore little willingness to accept optimistic expectations.

E. Lenders who accept poor appraisals to justify loans they wanted to make are those with long term relationships with the borrower or a bias in favor of local boosterism and other profit centers for the lender. Depersonalize the loan and the appraiser is free to be objective for market studies, feasibility tests, and valuation.

F. The new appraisal must be based on engineering studies relative to hazardous materials, soils, structural capacity, etc., market study, merchandising studies, and fiscal impact studies because otherwise hold harmless clauses on all these matters make the report worthless. These necessary studies suggest higher front end costs as a form of risk management.

G. Appraisal standards and certification and effective peer review mean the appraiser and related specialties are no longer controllable by the developer.

Exhibit 1

Jim - will mail you HR3675 when printed by CRC ?

Congressional Record

INTRODUCTION OF THE REAL ESTATE APPRAISAL REFORM ACT OF 1987

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia [Mr. BARNARD] is recognized for 5 minutes.

Mr. BARNARD. Mr. Speaker, I am today introducing the Real Estate Appraisal Reform Act of 1987. This legislation requires the establishment, by the Federal Government, of uniform appraisal standards and appraiser qualification requirements for real estate transactions in which the Federal Government has substantial financial or public policy interests. These appraisal standards and appraiser certification requirements will be enforced by State appraiser certifying agencies, authorized in the legislation.

Mr. Speaker, each year, billions of dollars in real estate loans and investments are made in which appraisals play a crucial role. Whether the transaction involves a multimillion-dollar commercial real estate project, the sale of hundreds of millions of dollars of mortgage backed securities, or the issuance of a $90,000 residential mortgage, it is a real estate appraiser who establishes the value of the property which collateralizes the loan or investment. It is a real estate appraiser who provides lenders and investors with assurance that in the event of a default, the property securing the project will be sufficient to cover all or most of the outstanding loan balance or the financial commitments made to investors. Without a real estate appraisal, most lenders will not lend and most investors will not invest in real estate related financial transactions.

But if there is a default in a real estate transaction and the appraisal has been faulty or abusive—if through incompetency or a desire to please a participant in the transaction, it grossly overvalues the collateral—the consequences can be catastrophic: Financial institutions can fail or sink into problem status; arms-length investors can lose their investments; financial markets can be disrupted; and innocent mortgage borrowers forced into backbreaking debt.

Mr. Speaker, the Federal Government has a vital financial and public policy interest in all of this: The Federal Deposit Insurance Agencies—the FSLIC and FDIC—are obligated to pay off depositors in financial institutions that fail because of bad real estate loans buttressed by bad appraisals. Agencies like the Federal Housing Administration, the Veterans' Administration, and the Farmers Home Administration, are required to reimburse commercial lenders when borrowers default on federally guaranteed residential mortgages and collateral is insufficient to pay off outstanding loan balances. Fannie Mae and Freddie Mac suffer millions of dollars in losses when there are defaults on mortgages they have purchased and collateral has been overvalued. The SEC's responsibility to assure accurate public disclosure of the market values assigned by appraisers to real estate securing mortgage backed securities, suffers when those appraisals are negligent. The statutory functions of other Federal agencies, like the General Services Administration and the Federal Highway Administration, have even been compromised because appraisals commissioned by those agencies turned out to be faulty.

The central cause of these problems, Mr. Speaker, is that the real estate appraisal industry is basically unregulated throughout the country. In more than 40 of the 50 States, anyone can perform real estate appraisals without having to demonstrate basic competency and without having to obtain a real estate appraisal license. If an individual wants to be a barber, a beautician, a plumber, or an electrician anywhere in America—let alone a physician, an attorney, an accountant, an engineer, or an architect—they are required to prove basic skills and submit to supervision by an appropriate State agency. Moreover, if an attorney or an accountant wishes to practice before the Federal Government or in areas governed by Federal statute, their professional conduct and the standards they use in their practice, are subjected to Federal supervision. But a real estate appraiser, who is responsible for establishing the value of properties collateralizing loan and investment transactions worth tens and even hundreds of millions of dollars each, is not subject to any systematic competency testing or supervision.

Mr. Speaker, the nature and extent of real estate appraisal abuses and their impact on Federal and private sector interests, have been carefully documented by the Government Operations Committee's Commerce, Consumer and Monetary Affairs Subcommittee, which I chair. In the mid-1980's, a series of hearings by the subcommittee into financial institution insolvencies and the role of insider misconduct in those insolvencies, uncovered a startling number of faulty and fraudulent appraisals in the real estate loan portfolios of virtually every failed and failing institution. What we found was that these abusive appraisals were used to fool bank examiners. They were used to make a dangerous or even fraudulent real estate loan appear secure, by having in the loan file an appraisal which assigns an unrealistically high market value to the property collateralizing the loan. As a consequence of these findings, the subcommittee launched a separate 15 month probe into the nature and extent of real estate appraisal abuse and their impact on Federal and private sector interests. The result of that probe was a report issued by the subcommittee in September of last year entitled "Impact of Appraisal Problems on Real Estate Lending, Mortgage Insurance, and Investment in the Secondary Market." That report concluded that "faulty and fraudulent real estate appraisals have become an increasingly serious national problem whose effects are widespread, prevasive, and costly. Abusive appraisals have contributed directly to the insolvency of hundreds of the Nation's financial institutions and have helped cause billions of dollars in losses to mortgage lenders, private mortgage insurers, investors in mortgage backed securities, and to numerous Federal agencies, particularly those that administer the Federal Deposit Insurance funds and mortgage guaranty programs." The report assigned blame for this problem in equal parts to real estate appraisers; to individuals involved in real estate transactions who pressure appraisers into overvaluing collateral sufficiently to "make the deal go"; and to the Federal Government itself, whose appraisal policies and practices in connection with their statutory functions, is disjointed, uneven, and ineffective.

Mr. Speaker, as a former banker and as a strong advocate of marketplace solutions to marketplace problems, it is not often that I offer legislation that provides for governmental action. But this is such an occasion. The Federal Government has a pressing financial and public policy interest in assuring that real estate appraisals are performed professionally and independently by truly qualified individuals. Just yesterday at subcommittee hearings on fraud by senior officials of financial institutions, the U.S. attorney for the Northern District of Illinois testified that at seven recently failed S&L's, senior officers, "working with corrupt appraisers, have falsely inflated the value of security for loans to finance projects in which the officers had an interest, or could receive kickbacks or 'commissions.' Typically, a condominium development carrying a high interest rate was inflated in value so that the savings and loan was financing the project at a rate of 100 percent or more. This is a pattern of fraud seen throughout the country in failed institutions." This results in losses in the hundreds of millions of dollars.

My bill requires a new Federal Interagency Appraisal Council, with advice from appraisers, to establish uniform appraisal standards and appraiser certification requirements in connection with real estate transactions in which the Federal Government has substantial interests. It leaves to the 50 States, primary enforcement responsibility for these standards and requirements. There is no Federal "grab for power" here. Only a recognition that both Federal and State governments have legitimate interests to protect. Nor is any massive bureaucracy created by my bill. In point of fact, the legislation merely articulates and centralizes in a new agency statutory powers already available to—but ineffectively or unevenly exercised by—more than half a dozen Federal agencies. Moreover, taxpayers will not—I repeat, will not—pay for the activities of the new Federal Interagency Council. Costs of the Council will be borne by extremely small fees imposed on commercial, for-profit users of federally certified appraisals and on certified appraisers themselves. We estimate that the annual fee imposed on certified appraisers will be no more than $75 per year; and that even a multimillion-dollar commercial transac-

tion would produce user fees of only several hundred dollars.

Mr. Speaker, my legislation represents a carefully crafted solution to a serious national problem. In some measure, appraisers themselves are the principal victims of the current unregulated status of their industry. When appraisers are pressured to overvalue property in order to make a speculative real estate transaction look sound, there is little incentive for the appraiser to say "No." If they resist the pressure, they are fired from the job, never to be hired again. On the other hand, if the appraiser produces the market valuation demanded, he or she has repeat business to gain and little to lose: There is no certification or license to lose; and no supervisory system to monitor the appraiser's conduct. All of that would change under my legislation.

In a very real sense, Mr. Speaker, the real estate appraisal industry is at a crossroads: If appraisers want to be recognized and respected as the professionals they truly are, then they have to be willing to assume the obligations of professinalism. That means, the ability to demonstrate competency; to be bound by an enforceable code of ethics; and to meet continuing education requirements. If, on the other hand, real estate appraisers are content with the status quo and with "business-as usual;" if they wish to continue as the "handmaidens" of others, then I predict perilous times for their industry, including an increase in law enforcement and liability problems. I also fear a continuing loss of public confidence in the safety and soundness of many real estate transactions.

There are those, undoubtedly, who will oppose some of the specifics of my legislation and others who will resist any Federal involvement in this area, notwithstanding the Federal interests that are at stake. And there will be time during hearings on the bill to debate its merits and for others to propose different solutions. While I am strongly convinced of the merits of my approach and will press hard for its adoption, I do intend during the course of legislative hearings to keep an open mind, particularly on those provisions that make Fannie Mae and Freddie Mac part of the Interagency Council.

I am including at this point, Mr. Speaker, a section-by-section analysis of my bill:

SECTION-BY-SECTION ANALYSIS OF H.R. 3675, THE REAL ESTATE APPRAISAL REFORM ACT OF 1987

SUMMARY

The Barnard bill requires the establishment of federal appraisal standards and appraiser qualification requirements for real estate transactions in which the Federal Government has substantial financial or public policy interests. These standards and requirements will be enforced by state appraiser certifying agencies, authorized in the legislation.

The bill establishes a Federal Interagency Appraisal Council composed of representatives of existing federal agencies whose functions encompass real estate related financial transactions and whose programs have been negatively impacted by faulty and fraudulent appraisals. It also authorizes the establishment of state appraiser certifying boards. The Federal Interagency Appraisal Council would exercise three standards-setting functions: (1) determining which categories of real estate related financial transactions are of sufficient financial or public policy importance to the Federal Government to require, in connection with those transactions, that appraisals be performed according to uniform standards and by qualified individuals; (2) establishing uniform appraisal standards for such "federally covered" real estate transactions; and (3) setting minimum qualification or certification requirements for individuals who appraise property in federally covered transactions. So that appraisal standards and appraiser qualification requirements are uniform throughout the Federal Government, the existing authority of twelve federal agencies to promulgate such standards and requirements is transferred to the new Interagency Council. Members of the Council will serve on a full-time basis, only for 3 years after the date of enactment (final standards must be adopted within that timeframe) and on a part-time basis thereafter. A small staff structure will remain in place. The activities of the Council will be funded by small user fees imposed on commercial, for-profit real estate projects using certified appraisers; and, by a small annual fee on certified appraisers, not to exceed $100.

The legislation authorizes and provides incentives for, the creation of state appraiser certifying agencies. These agencies or boards will be responsible, under grants of authority from state legislatures, for enforcing the federal appraisal standards and certification requirements.

Section 1. Short Title—The Act is cited as the "Real Estate Appraisal Reform Act of 1987".

Section 2. Findings—Expresses a congressional finding that (1) appraisals of property collateralizing real estate loans and investments are a critical component of such loans and investments because they provide lenders and investors with assurance that in the event of a default, loans can be repaid and investment losses minimized; (2) faulty and fraudulent real estate appraisals that substantially overvalue property securing loans and investments have become a pervasive national problem whose effects are extremely harmful and costly to the Federal Government and to private sector mortgage lenders, insurers, and investors; and (3) the quality of appraisals and the independence of appraisers would be greatly enhanced by the establishment of a regulatory structure requiring the adoption of federal appraisal standards and appraiser certification requirements, with enforcement by approved state appraiser certifying agencies.

Title I: Federal Interagency Council

Section 101. Establishment—Establishes the Federal Interagency Appraisal Council.

Section 102. Transfer of Functions—The bill transfers to the Council, the existing statutory authority of twelve federal agencies to promulgate appraisal standards and appraiser qualification requirements, assuring uniformity among the numerous federal agencies presently exercising such authority. Except for appraisal standards and appraiser qualification requirements, the affected federal agencies will retain their authority to enforce compliance with their statutes and regulations (so that, for example, the banking agencies would retain authority to treat appraised market values of financial institution real estate assets in any way they saw fit for regulatory purposes; and the VA and FHA would continue to be able to suspend fee appraisers who violate those agencies' policies, practices, and procedures).

Section 103. Functions of Council—

(a) In general: Describes the major functions of the Council as follows: The issuance of rules describing categories of real estate-related financial transactions which are sufficiently important to the Federal Government so as to constitute "federally covered transactions" under the Act; the adoption of uniform standards for the performance of real estate appraisals in connection with federally covered transactions; the establishment of minimum qualification requirements for the certification of persons who will be performing appraisals in connection with such transactions; the monitoring of the activities of state appraiser certifying agencies; and, transmittal of an annual report to the Congress describing the Council's work.

(b) Uniform appraisal standards: Uniform standards prescribed by the Council for performance of real estate appraisals in federally covered transactions shall be designed to produce an accurate assessment of the market value of the subject property, including recognition of differences in the types of property to be appraised (i.e., residential vs. commercial); shall describe the contents of and the manner in which an appraisal shall be performed for such transactions; shall permit certain functions in connection with the appraisal to be performed by non-certified persons so long as the final appraisal document is approved and signed by a certified person; shall prohibit the performance of appraisals by persons who have any financial interest in the property being appraised; and may incorporate appraisal standards promulgated by a government agency or by the appraisal industry itself, if such standards meet the requirements of the Act.

(c) Appraiser certification requirements: Requirements prescribed by the Council for the certification of persons to perform appraisals in federally covered transactions shall prescribe a code of ethical responsibility and a level of education (the bill does not require a college degree); work experience, knowledge, and continuing education, which must be satisfied; shall recognize and reflect different skill levels necessary to appraise different types of property; shall describe procedures, including testing requirements, under which a certification will be granted; shall modify certification requirements in the case of appraisers who can demonstrate 5 years of satisfactory appraisal practice; shall set forth criteria under which disciplinary action shall be taken against a certified appraiser.

(d) Procedures for establishing appraisal standards and appraiser certification requirements: Appraisal standards and appraiser certification requirements shall be adopted only after public hearings and an opportunity for interested parties to be heard.

(e) Time for proposal and adoption of standards and requirements: Uniform appraisal standards shall be proposed not later than 18 months and adopted in final form not later than 24 months after enactment. Appraiser certification requirements shall be proposed not later than 12 months and adopted not later than 18 months after enactment.

(f) Overseeing approved state appraiser certifying agencies and certified appraisers: Whenever the Council determines that an action of an approved state appraiser certifying agency or of a certified appraiser is contrary to the purposes of the Act, the Council may request modification of a certifying agency's policies or practices as they apply to certified appraisers. With respect to certified appraisers themselves, the Council itself can take disciplinary action for serious violations of appraisal standards and appraiser certification requirements, if a state certifying agency does not exist. In taking such actions, the Council shall adopt

written procedures and provide all affected parties with an ample opportunity to be heard. Disciplinary actions taken against certified appraisers, shall be subject to judicial review.

(g) Designation of certain real estate transactions as federally covered: Rules prescribed by the Council may designate as a federally covered transaction any transaction involving a purchase, lease, or sale of, or investment in, real estate or real estate related securities if in connection therewith (1) an agency or instrumentality of the United States purchases or sells real estate or real estate related securities or leases real estate; insures the deposits of a financial institution making real estate loans or investing in real estate projects; insures or guarantees the payment of a mortgage loan in the event of a borrower default; or regulates the offering and sale to the public of mortgage-backed securities; or (2) the Council determines that the public policy interest of the United States requires a designation as a federally covered transaction. Any real estate related financial transaction described above which involves the appraisal of property having a value of $1 million or more, shall be a federally covered transaction.

Section 104. Council Membership—The Council shall have twelve voting members from each of the following federal agencies: the five federal bank regulatory agencies, the Securities and Exchange Commission, the Veterans Administration, the Federal Housing Administration of DHUD, the Federal National Mortgage Association, the Federal Home Loan Mortgage Association, GSA and Farmers Home Administration. Persons appointed by the President shall serve for a 3-year fixed term. The Council shall have two nonvoting ex officio members from each of the following agencies: Internal Revenue Service of Treasury and the Department of Transportation.

Council members shall serve on a full-time basis only during the 36-month period following enactment and shall serve on a part-time basis thereafter.

Section 105. Chairman; Meetings—The chairman of the Council shall be elected for a 3-year term by the Council members. Meetings may be held at the call of the Chair or by a majority of Council members.

Section 106. Administrator and Staff—The Council shall have an administrator, who shall carry out the general administrative functions of the Council; a general counsel; a chief counsel for enforcement; and eight additional officers including a director for appraisal standards, a director for appraiser certification, and a coordinator for state certifying activities.

Section 107. General Powers of Council—The Council is authorized to hold hearings, sit and act, take testimony, receive evidence, issue subpoenas, and provide information and perform research. Rules promulgated by the Council shall be subject to the provisions of the Administrative Procedure Act. A seal of office shall be made for the Council and judicial notice shall be taken of such seal.

Section 108. Advisory Committees—There shall be within the Council two advisory committees which shall provide advice, information, analyses, and recommendations to the Council concerning its functions. The Real Estate Appraiser Committee shall consist of twelve members, ten from the appraisal industry and two from the public. The Real Estate Appraisal User Committee shall consist of fourteen members appointed by the chairman, as follows: two members each from the thrift industry, the commercial banking industry, the mortgage banking industry, the mortgage insurance industry, the securities industry, the home builders and the real estate industry. The Council shall meet with and consult the advisory committees before adopting uniform appraisal standards and appraiser certification requirements and at such other times as the Council considers necessary.

Sections 109 and 110. Appropriations and User Fees—The legislation authorizes a 2-year appropriation of $19 million to the Council and establishes a user fee mechanism for funding the future work of the Council and for paying back the initial $19 million appropriation. Specifically, the bill authorizes the Council to assess and collect (1) from each person who obtains an appraisal for a federally covered transaction that is a commerical, for-profit transaction, a small, graduated fee based on the appraised value of the subject property not to exceed $5,000 (even a multi-million dollar project would result in a user fee of only several hundred dollars); and (2) from each person who receives a certification under the Act, an annual fee not to exceed $100. Although Council funding will be from nontaxpayer sources, the Council will continue to be subject to the congressional budget process.

Section 111. Transfer and Allocation of Appropriations and Personnel—Directs OMB to determine which unexpended appropriations and personnel from agencies performing appraisal standards and appraiser qualification functions, should be transferred to the new Council.

Section 112. Savings Provisions—Establishes that Executive Branch and judicial proceedings underway at the time of enactment shall not be affected by the transfer of functions.

Title II: Establishment and Approval of State Appraiser Certifying Agencies

Section 201. Establishment and Approval of State Appraiser Certifying Agencies—

(a) Establishment: Authorizes the establishment of state appraiser certifying agencies in order to assure state supervision of the activities of certified appraisers. Permits a state to establish requirements for appraisers in addition to any federal requirements for certification, if such additional requirements pertain to appraisals in non-federally covered transactions and if the additional state imposed requirements do not discriminate against certified appraisers. The legislation also requires a state appraiser certifying agency to recognize a certified appraiser who has been certified by another state in connection with "temporary practice" in the state.

(b) Approval of state appraiser agency by Council: Requires that a state appraiser certifying agency under the Act be approved by the Federal Interagency Council. Establishes criteria for such approval including, a grant of authority by the state adequate to permit the certifying agency to properly monitor and discipline appraisers; assurance that the state's laws require appraiser access to adequate and reliable information regarding property values and the terms and conditions of real estate sale transactions; independence of the agency from state licensing agencies, such as a real estate licensing board.

(c) Revocation of approval: The Council may revoke approval of an approved state appraiser certifying agency upon a written determination that any of the major conditions on which the approval was based has changed significantly. Before any such revocation, the Council shall furnish the state with 90-days advance notice and an ample opportunity to provide rebuttal information or to correct the changed conditions.

Section 202. Certification of Appraisers—Establishes procedures for obtaining a certification. Requires a state agency to grant a certification to perform appraisals in federally covered transactions in that state, if the person is found by the certifying board to satisfy the certification requirements established by the Federal Interagency Council. This section also authorizes the Federal Interagency Council to directly certify a person to perform appraisals in federally covered transactions in a state if the person meets certification requirements and if the state in which the person will be appraising does not have an approved state appraiser certifying agency. During the 24-month period following the date of enactment of the Act, the Council is required to certify a person to perform appraisals in federally covered transactions if the person registers with the Council and agrees to abide by generally recognized appraisal standards and a code of ethics. This interim certification can be extended for 12 additional months if the Council determines that the state in which the person is certified to perform appraisals is in the process of establishing a state certifying agency. The Council is also authorized to waive any requirements under the Act relating to certification of a person to perform appraisals if it makes a written determination that there is a scarcity of certified appraisers in a particular state and if the person for whom such requirements are to be waived has a satisfactory record of appraisal performance.

Section 203. Government Employees Who Perform Appraisals—This section permits federal and state government employees who perform appraisals in connection with their official responsibilities, to be exempted from the requirements of the Act unless the heads of their agencies decide otherwise.

Title III: Appraisals in Federally Covered Transactions

Section 301. Violations in Obtaining and Performing Appraisals—It shall be a violation of the Act for a person to (1) knowingly seek, obtain or give money or any other thing of value in exchange for the performance of an appraisal by a person who is not a certified appraiser in connection with a federally covered transaction; and (2) for a person who is not a certified appraiser to knowingly provide an appraisal to a person in connection with a federally covered transaction. Fines are established for such violations. Proceedings for violations of this provision may be conducted by an approved state appraiser licensing agency or by the Council. Decisions are subject to judicial review.

Section 302. Use of Certified Appraisers by Federal Agencies—Beginning 24 months after enactment, federal agencies using fee appraisers shall use only certified appraisers in a federally covered transaction.

Title IV: General Provisions and Definitions

Section 401. Definition of terms found in the Act.

Section 402. Responsibilities Under State and Federal Law Not Affected—Nothing contained in the Act shall be construed to alter, modify or impair any responsibility under state or federal law imposed on appraisers, lenders and other persons who are parties to real estate related financial transactions.

Section 404. Federal Agency Reports Regarding Disciplinary Actions—Any federal agency that initiates a disciplinary action against a certified appraiser shall report that fact to the state certifying agency and to the Council.

I

100TH CONGRESS
1ST SESSION

H. R. 3675

To reorganize and consolidate in a new Federal agency certain functions of the Federal Government relating to real estate appraisals and to authorize State appraiser certifying agencies, for the purpose of protecting the financial and public policy interests of the United States in certain real estate-related financial transactions.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 20, 1987

Mr. BARNARD introduced the following bill; which was referred to the Committee on Government Operations

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A BILL

To reorganize and consolidate in a new Federal agency certain functions of the Federal Government relating to real estate appraisals and to authorize State appraiser certifying agencies, for the purpose of protecting the financial and public policy interests of the United States in certain real estate-related financial transactions.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 **SECTION 1. SHORT TITLE.**
4 This Act may be cited as the "Real Estate Appraisal
5 Reform Act of 1987".

1 **SEC. 2. TABLE OF CONTENTS.**

2 The contents of this Act are as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Findings.

TITLE I—FEDERAL INTERAGENCY COUNCIL

Sec. 101. Establishment.
Sec. 102. Transfer of functions to Council.
Sec. 103. Functions of Council.
Sec. 104. Council membership.
Sec. 105. Chairman; meetings.
Sec. 106. Administrator and staff.
Sec. 107. General powers of Council.
Sec. 108. Advisory Committees.
Sec. 109. Authorization of appropriations.
Sec. 110. Authority to assess and collect fees.
Sec. 111. Transfer and allocation of appropriations and personnel.
Sec. 112. Savings provisions.
Sec. 113. Reference.
Sec. 114. Transition.

TITLE II—APPROVAL OF STATE APPRAISER CERTIFYING AGENCIES; CERTIFICATION OF APPRAISERS

Sec. 201. Approval of State appraiser certifying agency.
Sec. 202. Certification of appraisers.
Sec. 203. Government employees who perform appraisals.

TITLE III—APPRAISALS IN FEDERALLY COVERED TRANSACTIONS

Sec. 301. Violations in obtaining and performing appraisals.
Sec. 302. Use of certified appraisers by Federal agencies.

TITLE IV—GENERAL PROVISIONS AND DEFINITIONS

Sec. 401. Definitions.
Sec. 402. Responsibilities under State and Federal law not affected.
Sec. 403. Federal agency reports of disciplinary and enforcement actions.

3 **SEC. 3. FINDINGS.**

4 The Congress finds as follows:

5 (1) Real estate appraisals, by establishing market
6 values for property securing loans and investments,
7 provide interested Federal agencies and private sector
8 lenders, investors, and insurers with reliable assurance

1 that they will be protected against catastrophic losses
2 in the event of defaults on such loans and investments.
3 (2) Faulty and fraudulent real estate appraisals
4 that overvalue property securing loans and investments
5 have become a pervasive national problem whose ef-
6 fects are extremely harmful and costly to federally in-
7 sured financial institutions; to Federal agencies and in-
8 strumentalities which guarant repayment of mortgage
9 loans or which provide liquidity to mortgage markets;
10 to investors in mortgage backed securities; and to
11 mortgage lenders, insurers, and others who participate
12 in real estate-related financial transactions.
13 (3) A dominant cause of abusive appraisals is
14 pressure on appraisers, by persons involved in real
15 estate-related financial transactions, to assign artificial-
16 ly high market values to properties which serve as col-
17 lateral for such transactions.
18 (4) The quality of appraisals and the independence
19 of appraisers would be greatly enhanced by the estab-
20 lishment of a regulatory structure for the appraisal in-
21 dustry, requiring the adoption of Federal appraisal
22 standards and appraiser certification requirements by a
23 new Federal agency and enforcement of such standards
24 and requirements by State certifying agencies.

TITLE I—FEDERAL INTERAGENCY APPRAISAL COUNCIL

SEC. 101. ESTABLISHMENT.

There is established the Federal Interagency Appraisal Council.

SEC. 102. TRANSFER OF FUNCTIONS TO COUNCIL.

(a) IN GENERAL.—There is transferred to the Council the authority of the following Federal agencies and instrumentalities to establish and regulate appraisal standards and appraiser qualification requirements in furtherance of their statutory responsibilities.

(1) FEDERAL BANK REGULATORY AGENCIES.—The Federal bank regulatory agencies in connection with assuring the safety and soundness of real estate lending and investment by federally insured financial institutions and preserving the assets of the Federal deposit insurance funds.

(2) VETERANS' ADMINISTRATION AND FHA.—The Veterans' Administration and the Federal Housing Administrator relating to the establishment of accurate market values for property held by them as security on insured and guaranteed residential mortgage loans.

(3) FEDERAL NATIONAL MORTGAGE ASSOCIATION AND THE FEDERAL HOME LOAN MORTGAGE CORPORATION.—The Federal National Mortgage As-

1 sociation and the Federal Home Loan Mortgage Cor-
2 poration in connection with establishing the value of
3 property securing mortgages purchased and the sale of
4 those mortgages to the public and to Federal home
5 loan banks in the form of mortgage-backed securities.
6 (4) SECURITIES AND EXCHANGE COMMISSION.—
7 The Securities and Exchange Commission in connec-
8 tion with assuring the accurate disclosure of market
9 values assigned by appraisers to real estate securing
10 mortgage-backed securities offered and sold to the
11 public.
12 (5) FEDERAL FINANCIAL INSTITUTIONS EXAMI-
13 NATION COUNCIL.—The Federal Financial Institutions
14 Examination Council relating to recommending ap-
15 praisal standards and appraiser qualification require-
16 ments in connection with the real estate loans and in-
17 vestments of insured financial institutions.
18 (6) GENERAL SERVICES ADMINISTRATION.—The
19 General Services Administration in connection with the
20 Federal Government's receiving fair value when it pur-
21 chases, sells, or leases properties on behalf of the Fed-
22 eral Government.
23 (7) FARMERS HOME ADMINISTRATION.—The
24 Farmers Home Administration in the Department of

1 Agriculture in connection with residential Rural Hous-
2 ing Loans secured by real estate.
3 (b) EXTENT OF AUTHORITY TRANSFERRED.—
4 (1) The transfer of authority to the Council under
5 this section includes all aspects of the appraisal stand-
6 ards and appraiser qualification functions vested in any
7 component of the agency or department from which
8 such authority is transferred.
9 (2) In carrying out any function transferred by
10 this Act, the Council may exercise any authority avail-
11 able by law (including appropriation Acts) with respect
12 to such function to an officer of the agency from which
13 such function is transferred, and the actions of the
14 Council in exercising such authority shall have the
15 same force and effect as when exercised by the such
16 officer.
17 (3) Agencies and instrumentalities whose author-
18 ity is transferred under this section shall not establish
19 policies, practices, or procedures which are in conflict
20 with Council rules, actions, and decisions authorized by
21 this Act.
22 SEC. 103. FUNCTIONS OF COUNCIL.
23 (a) IN GENERAL.—The Council shall—

1 (1) issue rules describing categories of real estate-
2 related financial transactions which constitute federally
3 covered transactions under this Act;
4 (2) prescribe uniform standards for the perform-
5 ance of real estate appraisals in connection with feder-
6 ally covered transactions;
7 (3) establish requirements for the certification of
8 persons who are qualified to perform appraisals in con-
9 nection with such transactions, including a code of
10 ethics;
11 (4) directly grant certification to and supervise the
12 activities of persons qualified to perform appraisals in
13 federally covered transactions in States which do not
14 have an approved State appraiser certifying agency;
15 (5) monitor and oversee the activities of approved
16 State appraiser certifying agencies; and
17 (6) transmit an annual report to the Congress not
18 later than January 31 of each year describing—
19 (A) the activities of the Council during the
20 preceding year; and
21 (B) problems encountered by the Council
22 during the preceding year in carrying out its func-
23 tions under this Act.

1 (b) UNIFORM APPRAISAL STANDARDS.—Uniform
2 standards prescribed by the Council for performance of real
3 estate appraisals in federally covered transactions—
4 (1) shall be designed to produce an accurate as-
5 sessment of the market value of the subject of the
6 appraisal;
7 (2) shall prescribe the contents of and the manner
8 in which an appraisal shall be performed for purposes
9 of such transactions, and the factors which may be
10 considered in performing such an appraisal;
11 (3) shall require the use of state-of-the-art ap-
12 praisal techniques;
13 (4) shall allow work on which such an appraisal is
14 based to be performed by a person who is not a certi-
15 fied appraiser under this Act to perform such apprais-
16 als if the final appraisal document is approved and
17 signed by a person who is a certified appraiser under
18 this Act;
19 (5) shall prohibit the performance of such an ap-
20 praisal by any person—
21 (A) who is hired or paid to perform such ap-
22 praisal by the borrower in a real estate project; or
23 (B) who is a real estate broker or agent who
24 represents a purchaser or seller of the property
25 which is the subject of the appraisal, or who is

1 employed by a person who represents a purchaser
2 or seller of the property or who has any financial
3 interest in the property;
4 (6) may incorporate any standards recommended
5 by the Real Estate Appraisal Advisory Committee or
6 promulgated prior or subsequent to the date of the en-
7 actment of this Act by a public entity, by the Appraisal
8 Foundation, or by a professional appraisal organization,
9 if such standards fulfill the requirements of paragraphs
10 (1) through (5); and
11 (7) shall recognize and reflect differences in the
12 types of real estate on which appraisals are performed
13 in federally covered transactions.
14 (c) APPRAISER CERTIFICATION REQUIREMENTS.—
15 Requirements prescribed by the Council for the certification
16 of a person under section 202 to perform appraisals in feder-
17 ally covered transactions as certified appraiser shall—
18 (1) prescribe a code of ethical responsibility and a
19 level of competency, including education, work experi-
20 ence, knowledge, and continuing education require-
21 ments which a person must satisfy to qualify for certifi-
22 cation to perform appraisals in federally covered trans-
23 actions;

1 (2) prescribe the procedures and testing require-
2 ments under which a certification to perform appraisals
3 in federally covered transactions shall be granted;
4 (3) in the case of appraisers who can demonstrate
5 5 years of appraisal practice and a satisfactory record
6 of performance, take account of, and be appropriately
7 modified to reflect, such prior experience;
8 (4) set forth the criteria and circumstances under
9 which disciplinary action, including suspension or revo-
10 cation of a certification, should be taken against a
11 person who has been granted a certification;
12 (5) to the greatest extent practicable insure the
13 performance of accurate and independent appraisals in
14 federally covered transactions by persons granted a
15 certification under such requirements; and
16 (6) recognize and reflect differences in the skills
17 required to perform appraisals on different types of real
18 estate on which appraisals are performed in federally-
19 covered transactions.
20 (d) PROCEDURES FOR ESTABLISHING APPRAISAL
21 STANDARDS AND APPRAISER CERTIFICATION REQUIRE-
22 MENTS.—Appraisal standards and appraiser certification re-
23 quirements prescribed under this section shall be prescribed
24 by regulation in accordance with procedures set forth in title
25 5, United States Code, including the holding of public hear-

1 ings with respect to any standards and requirements proposed
2 to be established.

3 (e) TIME FOR PROPOSAL AND ADOPTION OF STAND-
4 ARDS AND REQUIREMENTS.—

5 (1) APPRAISAL STANDARDS.—Appraisal stand-
6 ards prescribed under this section shall be proposed not
7 later than 18 months after the date of the enactment of
8 this Act and adopted in final form not later than 24
9 months, after the date of the enactment of this Act.

10 (2) CERTIFICATION REQUIREMENTS.—Appraiser
11 certification requirements prescribed under this section
12 shall be proposed not later than 12 months after the
13 date of the enactment of this Act and adopted in final
14 form not later than 18 months after the date of the en-
15 actment of this Act.

16 (f) OVERSEEING APPROVED STATE CERTIFYING
17 AGENCIES AND CERTIFIED APPRAISERS.—(1) Whenever
18 the Council determines that an action of an approved State
19 appraiser certifying agency, or of a certified appraiser, is con-
20 trary to the purposes of this Act, the Council shall take such
21 appropriate action within its power to accomplish those pur-
22 poses, including—

23 (A) providing written notice to the approved State
24 appraiser certifying agency describing the policies,
25 practices, and procedures of the State agency which

1 are contrary to the purposes of this Act and requesting
2 that appropriate modifications be made; and
3 (B) with respect to a certified appraiser, taking
4 disciplinary action for serious violations of appraisal
5 standards, the Code of Ethics, or other requirements,
6 including suspension or revocation of certification and
7 imposition of a fine of not more than $5,000 for each
8 violation, when a State licensing agency fails to carry
9 out this Act or when the violations occur in a State
10 that does not have an approved certifying agency.
11 (2) The Council shall adopt written procedures for
12 taking actions described in paragraph (1) which shall in-
13 clude—
14 (A) in the case of an action under paragraph
15 (1)(A), a full opportunity to be heard for the approved
16 State certifying agency with respect to which the
17 action is taken;
18 (B) in the case of a disciplinary action under para-
19 graph (1)(B), timely notice and description of all allega-
20 tions which are the basis of the action and an adequate
21 opportunity to respond to such allegations.
22 (3) A decision by the Council in an action under para-
23 graph (1)(B) shall be subject to judicial review.
24 (g) DESIGNATION OF CERTAIN REAL ESTATE TRANS-
25 ACTIONS AS FEDERALLY COVERED TRANSACTIONS.—

1 (1) DESIGNATION BY COUNCIL.—The Council
2 shall—
3 (A) determine which real estate-related fi-
4 nancial transactions are of sufficient financial or
5 public policy importance to the United States as
6 to require that an individual who performs an ap-
7 praisal in connection with such a transaction
8 should be a certified appraiser and that the ap-
9 praisal be performed in accordance with uniform
10 standards and other requirements under this Act;
11 and
12 (B) prescribe rules describing such transac-
13 tions and designating them as federally covered
14 transactions for purposes of this Act.
15 (2) TRANSACTIONS WHICH MAY BE DESIGNATED,
16 GENERALLY.—Rules prescribed by the Council under
17 this subsection may designate as a federally covered
18 transaction any transaction involving the purchase,
19 lease, or sale of, or investment in, real estate or real
20 estate-related securities if in connection therewith—
21 (A) an agency or instrumentality of the
22 United States—
23 (i) purchases or sells real estate or real
24 estate-related securities or leases real estate;

1 (ii) insures the deposits of a financial in-
2 stitution making mortgage loans, making
3 other loans for which real estate serves as
4 collateral, or investing in real estate;
5 (iii) insures or guarantees the payment
6 of a mortgage loan in the event of a bor-
7 rower default; or
8 (iv) regulates the offering and sale to, or
9 trading by, the public of securities collat-
10 eralized by real estate or real estate mort-
11 gages; or
12 (B) the Council determines that the public
13 policy interests of the United States require desig-
14 nation of the transaction as a federally covered
15 transaction.
16 (3) TRANSACTIONS INVOLVING $1,000,000 OR
17 MORE.—Rules prescribed by the Council under this
18 section shall designate as a federally covered transac-
19 tion any transaction described in paragraph (2) which
20 involves the appraisal of property having a value of
21 $1,000,000 or more.
22 (4) TIME FOR PROPOSAL AND ADOPTION OF
23 RULES DESIGNATING FEDERALLY COVERED TRANSAC-
24 TIONS.—Rules prescribed by the Council under this
25 section shall be proposed not later than 18 months, and

1 adopted in final form not later than 24 months after
2 the date of the enactment of this Act.

3 **SEC. 104. COUNCIL MEMBERSHIP.**

4 (a) NUMBER AND APPOINTMENT.—

5 (1) VOTING MEMBERS.—The Council shall have
6 12 voting members, who shall be appointed by the
7 President from among the most senior officials at each
8 of the following agencies, after consultation with the
9 head of each respective agency:

10 (A) The Federal Home Loan Bank Board.

11 (B) The Office of the Comptroller of the Cur-
12 rency.

13 (C) The Federal Deposit Insurance Corpora-
14 tion.

15 (D) The Board of Governors of the Federal
16 Reserve System.

17 (E) The National Credit Union Administra-
18 tion.

19 (F) The Securities and Exchange Commis-
20 sion.

21 (G) The Veterans' Administration.

22 (H) The Federal Housing Administration of
23 the Department of Housing and Urban Develop-
24 ment.

1 (I) The Federal National Mortgage Associa-
2 tion.
3 (J) The Federal Home Loan Mortgage Asso-
4 ciation.
5 (K) The Farmers Home Administration in
6 the Department of Agriculture.
7 (L) The General Services Administration.
8 A person appointed under this paragraph shall be se-
9 lected for appointment on the basis of the experience
10 and background of the person relating to the role of
11 appraisals in connection with the functions or programs
12 of their agency.
13 (2) NONVOTING MEMBERS.—The Council shall
14 have 2 nonvoting ex officio members, of whom 1 shall
15 be appointed by each of—
16 (A) the Commissioner of the Internal Reve-
17 nue Service; and
18 (B) the Secretary of Transportation;
19 from among senior officials of the Internal Revenue
20 Service and the Department of Transportation whose
21 duties relate to real estate appraisals.
22 (3) TERMS.—A person appointed under this sub-
23 section—
24 (A) shall serve for a 3 year term;

1 (B) may serve more than 1 term as a
2 member of the Council.
3 (b) APPOINTMENT OF REPLACEMENT.—If a member of
4 the Council leaves the agency from which the member was
5 appointed, he or she shall cease to be a member of the Coun-
6 cil and the head of that agency shall appoint another person
7 from that agency to serve as a member of the Council.
8 (c) PAY AND SERVICE OF MEMBERS.—
9 (1) 36-MONTH PERIOD FOLLOWING DATE OF EN-
10 ACTMENT.—During the 36-month period following the
11 date of the enactment of this Act, members of the
12 Council shall serve on a full time basis and be paid by
13 the agency from which they are appointed at the maxi-
14 mum rate of basic pay in effect for level V of the Ex-
15 ecutive Schedule.
16 (2) AFTER 36-MONTH PERIOD.—After the period
17 described in paragraph (1), members of the Council—
18 (A) shall serve on a part-time basis as neces-
19 sary to carry out the functions of the Council;
20 (B) shall not be paid any amount in addition
21 to amounts they are paid for employment by the
22 respective agency from which they are appointed;
23 and

1 (C) shall be reimbursed for expenses they
2 incur while engaged in official business of the
3 Council.
4 (3) REIMBURSEMENT OF PAY AND EXPENSES.—
5 The Council shall reimburse each agency from which a
6 member of the Council is appointed for the pay and ex-
7 penses of the members of the Council.
8 **SEC. 105. CHAIRMAN; MEETINGS.**
9 (a) CHAIRMAN.—
10 (1) ELECTION.—The Chairman of the Council
11 shall be elected by the Council from among its mem-
12 bers.
13 (2) TERM.—The term of office of the Chairman
14 shall be 3 years.
15 (b) MEETINGS.—
16 (1) IN GENERAL.—The Council shall meet at the
17 call of the Chairman or a majority of its members so
18 often as there is business to be conducted.
19 (2) QUORUM.—A majority of members of the
20 Council shall constitute a quorum but 3 members may
21 hold hearings.
22 (3) VOTING.—Decisions of the Council shall be
23 according to the vote of a majority of its voting mem-
24 bers.

1 **SEC. 106. ADMINISTRATOR AND STAFF.**

2 (a) ADMINISTRATOR.—Within 60 days after the elec-
3 tion of the Chairman, the Chairman shall nominate and the
4 Council shall appoint an Administrator who shall—

5 (1) carry out the general administrative functions
6 of the Council; and

7 (2) be paid the maximum annual rate of basic pay
8 in effect for GS–18 of the General Schedule.

9 (b) GENERAL COUNSEL.—The Council shall have a
10 General Counsel who shall be nominated by the Chairman
11 and appointed by a majority vote of the Council within 60
12 days after election of the Chairman. The General Counsel
13 shall—

14 (1) provide legal assistance to the Council con-
15 cerning the programs and policies of the Council; and

16 (2) be paid at the maximum annual rate of basic
17 pay in effect for GS–18 of the General Schedule.

18 (c) CHIEF COUNSEL FOR ENFORCEMENT.—The Coun-
19 cil shall have a Chief Counsel for Enforcement who shall be
20 nominated by the Chairman and appointed by a majority vote
21 of the Council within 60 days after election of the Chairman.
22 The Chief Counsel for Enforcement shall—

23 (1) carry out section 103(f); and

24 (2) be paid at the maximum annual rate of basic
25 pay in effect for GS–18 of the General Schedule.

26 (d) ADDITIONAL OFFICERS.—

1 (1) APPOINTMENT AND FUNCTIONS.—The Coun-
2 cil shall have such additional officers as may be ap-
3 pointed by the Chairman, and such additional officers
4 shall include the following:
5 (A) The Director for Appraisal Standards.
6 (B) The Director for Appraiser Certification.
7 (C) The Coordinator for State Certifying Ac-
8 tivities.
9 (D) The Director of Congressional Relations.
10 (E) The Director of Public Information.
11 (F) The Director of Management and
12 Budget.
13 (G) The Director of Policy, Planning, and
14 Research.
15 (2) OFFICERS REPORT TO ADMINISTRATOR;
16 OTHER FUNCTIONS PRESCRIBED BY COUNCIL.—Each
17 officer of the Council appointed under this subsection
18 shall—
19 (A) report directly to the Administrator;
20 (B) in addition to any functions vested in or
21 required to be delegated to such officer, perform
22 such additional functions as the Council may pre-
23 scribe; and
24 (C) be paid at a rate established by the
25 Council.

1 (3) DESCRIPTION OF FUNCTIONS.—Within 90
2 days after appointment of the Administrator, the Ad-
3 ministrator shall submit to the Council for its approval
4 a detailed description of the functions of each officer
5 appointed under this subsection.

6 (e) STAFF.—With the approval of the Council, the Ad-
7 ministrator may appoint such additional staff personnel as the
8 Administrator considers appropriate who shall be paid at a
9 rate established by the Council.

10 (f) APPLICABILITY OF CERTAIN CIVIL SERVICE
11 LAWS.—Except as otherwise provided in this Act, the offi-
12 cers and staff of the Council shall be appointed subject to the
13 provisions of title 5, United States Code, governing appoint-
14 ments in the competitive service.

15 (g) EXPERTS AND CONSULTANTS.—With the approval
16 of the Council, the Administrator may procure temporary and
17 intermittent services under section 3109(b) of title 5 of the
18 United States Code, at rates for individuals not to exceed the
19 daily equivalent of an annual rate of basic pay established by
20 the Council.

21 (h) STAFF OF FEDERAL AGENCIES.—Upon request of
22 the Council, the head of any Federal agency is authorized to
23 detail, on a reimbursable basis, any of the personnel of such
24 agency to the Council to assist the Council in carrying out its
25 duties under this Act.

1 **SEC. 107. GENERAL POWERS OF COUNCIL.**

2 (a) HEARINGS, MEETINGS, AND RESEARCH.—The
3 Council may, for the purpose of carrying out this Act, hold
4 hearings, sit and act at times and places, take testimony,
5 receive evidence, issue subpoenas, provide information, and
6 perform research, as the Council considers appropriate.

7 (b) RULES.—

8 (1) IN GENERAL.—The Council may prescribe
9 such rules and regulations as the Council determines
10 necessary or appropriate to administer and manage the
11 functions of the Council.

12 (2) APPLICABILITY OF TITLE 5.—The Council
13 shall prescribe such rules and regulations as are au-
14 thorized in accordance with chapter 5 of title 5, United
15 States Code.

16 (c) CONTRACTS.—

17 (1) IN GENERAL.—Subject to the provisions of
18 the Federal Property and Administrative Services Act
19 of 1949, the Council may make, enter into, and per-
20 form such contracts, grants, leases, cooperative agree-
21 ments, or other similar transactions with Federal or
22 other public agencies (including State and local govern-
23 ments) and private organizations and persons, and may
24 make such payments, by way of advance or reimburse-
25 ment, as the Council may determine necessary or ap-
26 propriate to carry out functions of the Council.

1 (2) SUBJECT TO APPROPRIATIONS.—Notwith-
2 standing any other provision of this Act, authority of
3 the Council to enter into contracts and to make pay-
4 ments under this subsection shall only be effective to
5 the extent, and in such amount, as is provided in ad-
6 vance in appropriation Acts.

7 (d) OBTAINING OFFICIAL DATA.—The Council may
8 secure directly from any department or agency of the United
9 States information necessary to enable it to carry out this
10 Act. Upon request of the Administrator, the head of such
11 department or agency shall furnish such information to the
12 Council.

13 (e) GIFTS.—The Council may accept, use, and dispose
14 of gifts or donations of services or property.

15 (f) MAILS.—The Council may use the United States
16 mails in the same manner and under the same conditions as
17 other departments and agencies of the United States.

18 (g) ADMINISTRATIVE SUPPORT SERVICES.—The Ad-
19 ministrator of General Services shall provide to the Council
20 on a reimbursable basis such administrative support services
21 as the Council may request.

22 (h) POWERS OF MEMBERS AND AGENTS.—Any agent
23 of the Council may, if so authorized by the Council, take any
24 action which the Council is authorized by this section to take.

1 (i) DELEGATION.—Except as otherwise provided in this
2 Act, the Council may delegate any function to such officers
3 and employees of the Council as the Council may designate,
4 and may authorize such successive redelegations of such
5 functions within the Council as may be necessary or appro-
6 priate. No delegation of functions by the Council under this
7 subsection or under any other provision of this Act shall re-
8 lieve the Council of responsibility for the administration of
9 such functions.

10 (j) REORGANIZATION.—The Council may allocate or
11 reallocate functions among the officers of the Council, and
12 establish, consolidate, alter, or discontinue such organiza-
13 tional entities within the Council as may be necessary or
14 appropriate.

15 (k) ACQUISITION AND MAINTENANCE OF PROP-
16 ERTY.—

17 (1) AUTHORITY.—The Council may acquire (by
18 purchase, lease, condemnation, or otherwise), con-
19 struct, improve, repair, operate, and maintain—

20 (A) research and testing sites and facilities;

21 (B) quarters and related accommodations for
22 employees and dependents of employees of the
23 Administration; and

24 (C) personal property (including patents), or
25 any interest therein;

1 as may be necessary to carry out the purposes of this
2 Act.
3 (2) LIMITATION.—The authority granted by para-
4 graph (1) shall be available only with respect to facili-
5 ties of a special purpose nature that cannot readily be
6 reassigned from similar Federal activities and are not
7 otherwise available for assignment to the Council by
8 the Administrator of General Services.
9 (l) USE OF FACILITIES.—
10 (1) AUTHORITY.—With their consent, the Council
11 may, with or without reimbursement, use the research,
12 equipment, services, and facilities of any agency or in-
13 strumentality of the United States, of any State or po-
14 litical subdivision thereof, or of any foreign govern-
15 ment, in carrying out any function of the Council.
16 (2) USE OF FACILITIES BY OTHER PERSONS.—
17 The Council may permit public and private agencies,
18 corporations, associations, organizations, or individuals
19 to use any real property, or any facilities, structures,
20 or other improvements thereon, under the custody and
21 control of the Council for Council purposes. The Coun-
22 cil shall permit the use of such property, facilities,
23 structures, or improvements under such terms and
24 rates and for such period as may be in the public inter-
25 est, except that the periods of such uses may not

1 exceed 5 years. The Council may require permittees
2 under this subsection to recondition and maintain, at
3 their own expense, the real property, facilities, struc-
4 tures, and improvements used by such permittees to a
5 standard satisfactory to the Council.

6 (3) USE OF PROCEEDS.—Proceeds from reim-
7 bursements under this section may be credited to the
8 appropriation of funds that bear or will bear all or part
9 of the cost of such equipment or facilities provided or
10 to refund excess sums when necessary.

11 (4) ACQUISITION OF REAL PROPERTY.—Any in-
12 terest in real property acquired pursuant to this title
13 shall be acquired in the name of the United States
14 Government.

15 (m) GIFTS AND BEQUESTS.—The Council may accept,
16 hold, administer, and utilize gifts, bequests and devises of
17 property, both real and personal, for the purpose of aiding or
18 facilitating the work of the Council. Gifts, bequests, and de-
19 vises of money and proceeds from sales of other property
20 received as gifts, bequests, or devises shall be deposited in
21 the Treasury and shall be available for disbursement upon the
22 order of the Council.

23 (n) FUNDS TRANSFER.—The Council may, when au-
24 thorized in an appropriation Act in any fiscal year, transfer
25 funds from one appropriation to another within the Council.

1 (o) SEAL OF ADMINISTRATION.—The Council shall
2 cause a seal of office to be made for the Council of such
3 design as the Council shall approve. Judicial notice shall be
4 taken of such seal.

5 (p) ANNUAL REPORT.—The Council shall, as soon as
6 practicable after the end of each fiscal year, make a single,
7 comprehensive report to the President and the Congress on
8 the activities of the Council during such fiscal year.

9 **SEC. 108. ADVISORY COMMITTEES.**

10 (a) IN GENERAL.—The Council shall have 2 advisory
11 committees, to be known, respectively, as the Real Estate
12 Appraiser Committee and the Real Estate Appraisal User
13 Committee.

14 (b) FUNCTIONS AND COMPOSITION.—

15 (1) REAL ESTATE APPRAISER COMMITTEE.—
16 The Real Estate Appraiser Committee shall provide
17 advice, information, analysis, and recommendations to
18 the Council concerning real estate appraisal standards
19 prescribed under section 103 and requirements for cer-
20 tification of appraisers under section 202, and shall
21 consist of 12 members appointed by the Chairman, as
22 follows:

23 (A) 8 members appointed from among per-
24 sons who have substantial experience in the pro-
25 fession of real estate appraisal and who are nomi-

1 nated by a professional appraiser organization
2 which—
3 (i) adheres to the Uniform Standards of
4 Professional Appraisal Practice; and
5 (ii) has adopted and enforces competen-
6 cy requirements and a code of ethics.
7 (B) 2 members appointed from among per-
8 sons nominated by the Appraisal Foundation.
9 (C) 2 members appointed from among per-
10 sons in higher education or members of the gener-
11 al public who can demonstrate a high degree of
12 knowledge of the role of appraisals in real estate-
13 related financial transactions.
14 (2) REAL ESTATE APPRAISAL USER COMMIT-
15 TEE.—The Real Estate Appraisal User Committee
16 committees shall provide advice, information, analysis,
17 and recommendations to the Council concerning the
18 use of appraisals in real estate-related financial trans-
19 actions, and shall consist of 14 members appointed by
20 the Chairman, as follows:
21 (A) 2 members appointed from among per-
22 sons representing the thrift industry.
23 (B) 2 members appointed from among per-
24 sons representing the commercial banking in-
25 dustry.

1 (C) 2 members appointed from among per-
2 sons representing the mortgage banking industry.
3 (D) 2 members appointed from among per-
4 sons representing the mortgage insurance in-
5 dustry.
6 (E) 2 members appointed from among per-
7 sons representing the securities industry.
8 (F) 2 members appointed from among per-
9 sons who are home builders.
10 (G) 2 members appointed from among per-
11 sons who are realtors.
12 (c) MEETINGS AND CONSULTATIONS WITH ADVISORY
13 COMMITTEES.—The Council shall meet and consult with the
14 Real Estate Appraiser Committee and the Real Estate
15 Appraisal User Committee—
16 (1) before adopting uniform appraisal standards
17 and appraiser certification requirements under section
18 103;
19 (2) at such other times as the Council considers
20 necessary to assist the Council in carrying out its func-
21 tions; and
22 (3) not less than twice each year during the first 3
23 years after completion of appointments to the Council.

1 **SEC. 109. AUTHORIZATION OF APPROPRIATIONS.**

2 For purposes of this Act there are authorized to be ap-
3 propriated to the Council $19,000,000 for the 24-month
4 period beginning on the date of the enactment of this Act.

5 **SEC. 110. AUTHORITY TO ASSESS AND COLLECT FEES.**

6 (a) ASSESSMENT AND COLLECTION.—The Council may
7 assess and collect—

8 (1) from each person who receives a certification
9 under this Act to perform appraisals in federally cov-
10 ered transactions, an annual fee of not more than
11 $100;

12 (2) from each person who obtains an appraisal for
13 a federally covered transaction that is a commercial
14 for-profit transaction, a fee of not more than $5,000,
15 which shall be determined on a graduated basis with
16 respect to the value of the transaction;

17 in such amounts as are authorized by Congress and sufficient
18 to support the activities of the Council under this Act.

19 (b) USE OF AMOUNTS COLLECTED.—Amounts collect-
20 ed by the Council under this section may only be used to—

21 (1) support its activities under this Act; and

22 (2) reimburse the general fund of the Treasury for
23 amounts appropriated to and expended by the Council
24 during the 24-month period following the date of the
25 enactment of this Act.

1 (c) SUBMITTAL OF BUDGET TO CONGRESS.—The
2 Council shall submit to the Congress not later than 160 days
3 after the date of the enactment of this Act a budget for its
4 operations during the 2-year period following such date
5 which includes a formula for collection of amounts under this
6 section and allocation of such amounts among activities of the
7 Council.

8 **SEC. 111. TRANSFER AND ALLOCATION OF APPROPRIATIONS**
9 **AND PERSONNEL.**

10 (a) IN GENERAL.—The personnel employed in connec-
11 tion with, and the assets, liabilities, contracts, property,
12 records, and unexpended balance of appropriations, authori-
13 zations, allocations, and other funds employed, held, used,
14 arising from, available to, or to be made available in connec-
15 tion with the authorities, functions, and offices, or portions
16 thereof, transferred by section 102, subject to section 202 of
17 the Budget and Accounting Procedures Act of 1950, shall be
18 transferred to the Council for appropriate allocation. Unex-
19 pended funds transferred pursuant to this subsection shall be
20 used only for the purposes for which the funds were originally
21 authorized and appropriated.

22 (b) EFFECT ON PERSONNEL.—

23 (1) LIMITATION ON SEPARATION AND REDUC-
24 TION IN GRADE AND COMPENSATION.—The transfer
25 under this Act of full-time personnel (except special

1 Government employees) and part-time personnel hold-
2 ing permanent positions shall not cause any such em-
3 ployee to be separated or reduced in grade or compen-
4 sation for one year after the date of transfer to the
5 Council.

6 (2) CONTINUATION OF COMPENSATION RATE.—
7 Any person who, on the day preceding the effective
8 date of this Act, held a position compensated in ac-
9 cordance with the Executive Schedule prescribed in
10 chapter 53 of title 5, United States Code, and who,
11 without a break in service, is appointed to a position of
12 employment by the Council having duties comparable
13 to the duties performed immediately preceding such ap-
14 pointment shall continue to be compensated in such
15 new position at not less than the rate provided for such
16 previous position, for the duration of the service of
17 such person in such new position.

18 (c) INCIDENTAL TRANSFERS.—

19 (1) DETERMINATIONS BY DIRECTOR OF OMB,
20 GENERALLY.—The Director of the Office of Manage-
21 ment and Budget, within 180 days after the date of the
22 enactment of this Act, shall make such determinations
23 as may be necessary with regard to the functions, of-
24 fices, or portions thereof transferred by this Act, and
25 shall make such additional incidental dispositions of

1 personnel, assets, liabilities, grants, contracts, property,
2 records, and unexpended balances of appropriations,
3 authorizations, allocations, and other funds held, used,
4 arising from, available to, or to be made available in
5 connection with such functions, offices, or portions
6 thereof, as may be necessary to carry out this Act.

7 (2) DETERMINATIONS BY DIRECTOR OF OMB RE-
8 GARDING TRANSFERS WITHIN SENIOR EXECUTIVE
9 SERVICE.—After consultation with the Director of the
10 Office of Personnel Management, the Director of the
11 Office of Management and Budget may, at such time
12 as the Director of the Office of Management and
13 Budget provides, make such determinations as may be
14 necessary with regard to the transfer of positions
15 within the Senior Executive Service in connection with
16 functions and offices transferred by this Act.

17 **SEC. 112. SAVINGS PROVISIONS.**

18 (a) IN GENERAL.—All orders, determinations, rules,
19 regulations, permits, grants, contracts, certificates, licenses,
20 and privileges—

21 (1) which have been issued, made, granted, or al-
22 lowed to become effective by the President, any Feder-
23 al entity or official thereof, or by a court of competent
24 jurisdiction, in the performance of functions which are
25 transferred under this Act to the Council, and

1 (2) which are in effect at the time this Act takes
2 effect,
3 shall continue in effect according to their terms until modi-
4 fied, terminated, superseded, set aside, or revoked in accord-
5 ance with relevant provisions of law by the President, the
6 Council, or other authorized official, a court of competent
7 jurisdiction, or by operation of law.
8 (b) PROCEEDINGS.—
9 (1) IN GENERAL.—This Act shall not affect any
10 proceeding, including notices of proposed rulemaking,
11 or any application for any license, permit, certificate,
12 or financial assistance pending on the effective date of
13 this Act before any Federal entity, and applications, to
14 the extent that they relate to functions transferred
15 under this Act, shall be continued. Orders shall be
16 issued in such proceedings, appeals shall be taken
17 therefrom, and payments shall be made pursuant to
18 such orders, as if this Act had not been enacted, and
19 orders issued in any such proceedings shall continue in
20 effect until modified, terminated, superseded, or re-
21 voked by the Council, by a court of competent jurisdic-
22 tion, or by operation of law. Nothing in this paragraph
23 shall be deemed to prohibit the discontinuance or modi-
24 fication of any such proceeding under the same terms
25 and conditions and to the same extent that such pro-

1 ceeding could have been discontinued or modified if
2 this Act had not been enacted.
3 (2) ISSUANCE OF RULES.—Federal entities may
4 issue rules providing for the orderly transfer to the
5 Council of proceedings continued under paragraph (1).
6 (c) ABATEMENT.—No suit, action, or other proceeding
7 commenced by or against any officer in the official capacity of
8 such individual as an officer of any Administration or agency,
9 functions of which are transferred by this Act, shall abate by
10 reason of the enactment of this Act. No cause of action by or
11 against any agency, functions of which are transferred by this
12 Act, or by or against any officer thereof in the official capac-
13 ity of such officer, shall abate by reason of the enactment of
14 this Act.
15 (d) CONTINUANCE.—
16 (1) SUITS NOT AFFECTED.—Except as provided
17 in paragraph (2)—
18 (A) this Act shall not affect suits commenced
19 before the effective date of this Act, and
20 (B) in all such suits, proceedings shall be
21 had, appeals taken, and judgments rendered, in
22 the same manner and effect as if this Act had not
23 been enacted.
24 (2) SUBSTITUTION OF PARTIES.—If, before the
25 date on which this Act takes effect, any agency, or of-

1 ficer thereof in the official capacity of such officer, is a
2 party to a suit, and under this Act any function of such
3 agency or officer is transferred to the Council, then
4 such suit shall be continued with the Chairman or
5 other appropriate official of the Council substituted or
6 added as a party.

7 (e) JUDICIAL REVIEW.—Orders and actions of the
8 Council in the exercise of functions transferred under this Act
9 shall be subject to judicial review to the same extent and in
10 the same manner as if such orders and actions had been by
11 the agency or office, or part thereof, exercising such functions
12 immediately preceding their transfer.

13 (f) STATUTORY REQUIREMENTS.—Any statutory re-
14 quirements relating to notice, hearings, action upon the
15 record, or administrative review that apply to any function
16 transferred by this Act shall apply to the exercise of such
17 function by the Council.

18 **SEC. 113. REFERENCE.**

19 With respect to any function transferred by this Act and
20 exercised on or after the effective date of this Act, reference
21 in any other Federal law to an official empowered with a
22 function transferred by this Act be deemed to refer to the
23 Council.

1 **SEC. 114. TRANSITION.**

2 With the consent of the head of the agency concerned,
3 the Council may use the services of such officers, employees,
4 and other personnel of any agency from which functions or
5 offices have been transferred to the Council and funds appro-
6 priated to such functions or offices for such period of time as
7 may reasonably be needed to facilitate the orderly implemen-
8 tation of this Act.

9 TITLE II—APPROVAL OF STATE 10 APPRAISER CERTIFYING AGEN- 11 CIES; CERTIFICATION OF AP- 12 PRAISERS

13 **SEC. 201. ESTABLISHMENT AND APPROVAL OF STATE**
14 **APPRAISER CERTIFYING AGENCY.**

15 (a) ESTABLISHMENT.—

16 (1) IN GENERAL.—In order to assure an adequate
17 number of certified appraisers for the performance in a
18 State of appraisals in federally covered transaction and
19 to assure effective supervision of the activities of certi-
20 fied appraisers, a State may establish a State appraiser
21 certifying agency.

22 (2) EXISTING STATE AUTHORITY NOT LIMIT-
23 ED.—This section shall not be considered to limit the
24 authority of a State to establish requirements for ap-
25 praisers in addition to any requirements for certification
26 under this Act if such additional requirements pertain

1 to performance of appraisals other than for federally
2 covered transactions and if the requirements imposed
3 by the State do not discriminate against certified
4 appraisers.

5 (3) TEMPORARY PRACTICE.—A State appraiser
6 certifying agency shall recognize on a temporary basis
7 the certification of a certified appraiser issued by an-
8 other State if—

9 (A) the property to be appraised is part of a
10 federally covered transaction;

11 (B) the certified appraiser's business is of a
12 temporary nature and incidental to his or her
13 practice in another State or States; and

14 (C) the certified appraiser registers with the
15 appraiser certifying agency in the State of tempo-
16 rary practice, describing the real estate to be ap-
17 praised and estimating the time necessary for
18 completion of the appraisal.

19 (b) APPROVAL OF STATE APPRAISER CERTIFYING
20 AGENCY BY COUNCIL.—

21 (1) IN GENERAL.—A State appraiser certifying
22 agency shall be an approved State appraiser certifying
23 agency if the State agency is approved by the Council
24 under this subsection.

1 (2) APPROVAL BY COUNCIL.—The Council may
2 approve a State appraiser certifying agency if it issues
3 a written finding that—
4 (A) the agency agrees to recognize and en-
5 force standards, requirements, and procedures pre-
6 scribed by the Council;
7 (B) the agency is granted authority by the
8 State which is adequate—
9 (i) to permit the agency to carry out its
10 functions under this Act;
11 (ii) to monitor and investigate the per-
12 formance of appraisals and the conduct of ap-
13 praisers in federally covered transactions, in-
14 cluding the power of subpoena; and
15 (iii) to discipline persons who perform
16 appraisals in federally covered transactions.
17 for violations of appraisal standards, the code
18 of ethics, and appraiser certification require-
19 ments, including authority to impose fines
20 and to suspend and revoke certifications
21 issued pursuant to this Act;
22 (C) the State's laws assure the ready avail-
23 ability to appraisers in the State of adequate and
24 reliable information regarding property values and

1 the terms and conditions of real estate sale trans-
2 actions;
3 (D) the agency is empowered and agrees to
4 furnish to the Council information regarding—
5 (i) certification policies, practices, and
6 procedures in the State;
7 (ii) disciplinary actions carried out by
8 the agency, including providing written
9 notice to the Council within 30 days after
10 the initiation pursuant to subparagraph
11 (B)(iii) of any disciplinary action or proceed-
12 ing against a certified appraiser;
13 (iii) disciplinary actions which relate to
14 the performance of appraisals and which are
15 carried out against certified appraisers by
16 other State agencies;
17 (iv) such other information as is deter-
18 mined by the Council to be necessary to
19 carry out its functions under this Act; and
20 (E) the agency is independent from other
21 State agencies which issue certifications or li-
22 censes under State law.
23 (c) REVOCATION OF APPROVAL.—
24 (1) IN GENERAL.—The Council may revoke ap-
25 proval of an approved State appraiser certifying agency

1 upon a written determination that any of the major
2 conditions on which the approval was based has
3 changed significantly.

4 (2) OPPORTUNITY TO BE HEARD OR CORRECT
5 CONDITIONS.—Before revoking an approval of an ap-
6 proved State appraiser certifying agency, the Council
7 shall provide to the agency—

8 (A) written notice of the intention of the
9 Council to revoke such approval not less than 90
10 days before revoking such approval; and

11 (B) ample opportunity to provide rebuttal in-
12 formation or to correct the changed conditions.

13 **SEC. 202. CERTIFICATION OF APPRAISERS.**

14 (a) IN GENERAL.—A person shall be a certified apprais-
15 er if the person is certified to perform appraisals in federally
16 covered transactions by an approved State appraiser certify-
17 ing agency or by the Council. The Council shall adopt rules
18 establishing procedures and requirements for certification of a
19 person under this section.

20 (b) CERTIFICATION BY APPROVED STATE APPRAISER
21 CERTIFYING AGENCY.—An approved State appraiser certi-
22 fying agency shall certify a person to perform appraisals in
23 federally covered transactions in that State if the person is
24 found to satisfy the certification requirements prescribed by
25 the Council under section 103 and agrees to abide by the

1 uniform standards of professional appraisal practice and the
2 code of ethics prescribed by the Council under that section.
3 (c) CERTIFICATION BY COUNCIL.—
4 (1) IN GENERAL.—The Council may certify a
5 person to perform appraisals in federally covered trans-
6 actions in a State if—
7 (A) the person is found to satisfy the certifi-
8 cation requirements prescribed by the Council
9 under section 103; and
10 (B) the State in which the person will be
11 certified to perform such appraisals—
12 (i) does not have an approved State ap-
13 praiser certifying agency; or
14 (ii) has an approved State appraiser cer-
15 tifying agency that is in violation of this Act.
16 (2) INTERIM CERTIFICATION.—An approved
17 State certifying agency, or in a State which does not
18 have such an agency, the Council, shall certify a
19 person to perform appraisals during the 24-month
20 period following the date of the enactment of this Act
21 in federally covered transactions specified by the
22 agency or Council at the time of such certification, if
23 the person—
24 (A) applies to the agency or the Council for
25 such certification; and

1 (B) agrees to abide by generally recognized
2 appraisal standards and a high degree of ethical
3 conduct in performing any appraisal before the ef-
4 fective date of uniform appraisal standards and
5 certification requirements prescribed by the Coun-
6 cil under section 103, and to abide by other re-
7 quirements prescribed by the Council under such
8 section after they become effective;
9 unless the agency or the Council makes a written find-
10 ing that the person is not qualified to perform apprais-
11 als in federally covered transactions and describes the
12 reasons for such finding.
13 (3) EXTENSION OF INTERIM CERTIFICATION.—
14 The Council may extend for 12 months a certification
15 under paragraph (2) if the Council issues a written de-
16 termination that the State in which the person is certi-
17 fied to perform appraisals is in the process of establish-
18 ing an agency which is likely to be approved under
19 section 201.
20 (d) WAIVER OF APPRAISER CERTIFICATION REQUIRE-
21 MENTS FOR STATE HAVING SCARCITY OF QUALIFIED AP-
22 PRAISERS.—The Council may waive any requirement under
23 this Act relating to certification of a person to perform ap-
24 praisals if the Council makes a written determination—

1 (1) that there is a scarcity of certified appraisers
2 to perform appraisals in connection with federally cov-
3 ered transactions in a State; and
4 (2) that the person for whom such requirements
5 shall be waived has a satisfactory record of appraisal
6 performance.

7 **SEC. 203. GOVERNMENT EMPLOYEES WHO PERFORM**
8 **APPRAISALS.**

9 This Act does not require an employee of a Federal or
10 State Government agency who performs real estate apprais-
11 als in connection with the employee's official responsibilities
12 to obtain a certification unless required to do so by the head
13 of such employee's agency.

14 TITLE III—APPRAISALS IN FED-
15 ERALLY COVERED TRANSAC-
16 TIONS

17 **SEC. 301. VIOLATIONS IN OBTAINING AND PERFORMING**
18 **APPRAISALS.**

19 (a) VIOLATIONS.—It shall be a violation of this
20 section—
21 (1) for a person to knowingly seek, obtain, or give
22 money or any other thing of value in exchange for the
23 performance of an appraisal by a person who is not a
24 certified appraiser in connection with a federally cov-
25 ered transaction; and

1 (2) for a person who is not a certified appraiser to
2 knowingly provide an appraisal to a person in connec-
3 tion with a federally covered transaction.
4 (b) PENALTIES.—A person—
5 (1) who violates subsection (a)(1) shall be subject
6 to a fine of not more than $25,000 for the first viola-
7 tion, and not more than $50,000 for each subsequent
8 violation; and
9 (2) who violates subsection (a)(2) shall be subject
10 to a fine of not more than $5,000 for the first violation
11 and not more than $10,000 for each subsequent
12 violation.
13 (c) PROCEEDING.—
14 (1) IN GENERAL.—A proceeding with respect to a
15 violation of this section shall be an administrative pro-
16 ceeding which may be conducted by an approved State
17 appraiser certifying agency or by the Council in ac-
18 cordance with the procedures set forth in subchapter II
19 of chapter 5 of title 5, United States Code.
20 (2) JUDICIAL REVIEW.—Notwithstanding any
21 other provision of law—
22 (A) a decision of an approved State appraiser
23 certifying agency under paragraph (1) shall be
24 subject to review by the court of appeals of the
25 State; and

1 (B) a decision of the Council under para-
2 graph (1) shall be subject to review by the United
3 States Court of Appeals for the District of Colum-
4 bia;
5 in accordance with chapter 7 of title 5, United States
6 Code.

7 **SEC. 302. USE OF CERTIFIED APPRAISERS BY FEDERAL**
8 **AGENCIES.**

9 Notwithstanding any other provision of law, any Feder-
10 al agency that uses the services of a fee appraiser after 24
11 months after the date of the enactment of this Act shall
12 obtain those services from a certified appraiser if the services
13 are obtained in connection with a federally covered trans-
14 action.

15 TITLE IV—GENERAL PROVISIONS
16 AND DEFINITIONS

17 **SEC. 401. DEFINITIONS.**

18 For purposes of this Act:
19 (1) ADMINISTRATOR.—The term "Administrator"
20 means the Administrator of the Council appointed
21 under section 106(a).
22 (2) CERTIFIED APPRAISER.—The term "certified
23 appraiser" means a person who is certified under sec-
24 tion 202.

1 (3) APPROVED STATE APPRAISER CERTIFYING
2 AGENCY.—The term "approved State appraiser certify-
3 ing agency" means a State appraiser certifying agency
4 approved under section 201(b).
5 (4) COUNCIL.—The term "Council" means the
6 Federal Interagency Appraisal Council established by
7 section 101.
8 (5) FEDERALLY COVERED TRANSACTION.—The
9 term "federally covered transaction" means a transac-
10 tion designated by the Council to be a federally cov-
11 ered transaction under section 103(g).
12 (6) REAL ESTATE-RELATED FINANCIAL TRANS-
13 ACTION.—The term "real estate-related financial
14 transaction" means any transaction involving—
15 (A) the sale, lease, purchase, or exchange of
16 real property, including interests in property;
17 (B) the financing of the purchase or sale of
18 real property;
19 (C) the refinancing of real property; or
20 (D) use of real property as security for a loan
21 or investment, including mortgage-backed securi-
22 ties.
23 (7) STATE APPRAISER CERTIFYING AGENCY.—
24 The term "State appraiser certifying agency" means
25 any agency or instrumentality of a State the functions

1 of which relate to the regulation of persons who per-
2 form appraisals in real estate-related financial trans-
3 actions.

4 (8) FEDERAL BANK REGULATORY AGENCIES.—
5 The term "Federal bank regulatory agencies" means
6 the Federal Reserve Board, the Federal Deposit Insur-
7 ance Corporation, the Office of Comptroller of the Cur-
8 rency, the Federal Home Loan Bank Board, and the
9 National Credit Union Administration.

10 (9) CHAIRMAN.—The term "Chairman" means
11 the Chairman of the Council elected by the Council
12 under section 105.

13 **SEC. 402. RESPONSIBILITIES UNDER STATE AND FEDERAL**
14 **LAW NOT AFFECTED.**

15 (a) RESPONSIBILITIES UNDER STATE AND FEDERAL
16 LAW.—This Act shall not be construed to alter, modify, or
17 impair any responsibilities which are not inconsistent with
18 this Act and which are imposed by State or Federal law on
19 appraisers, lenders, and other persons who are parties to real
20 estate-related financial transactions.

21 (b) AUTHORITY OF FEDERAL AGENCIES AND INSTRU-
22 MENTALITIES.—Except for the functions of establishing ap-
23 praisal standards and appraiser qualification requirements,
24 this Act shall not be construed to relieve any Federal agency

1 or instrumentality of any authority to carry out its statutory
2 responsibilities.

3 **SEC. 403. FEDERAL AGENCY REPORTS OF DISCIPLINARY AND**
4 **ENFORCEMENT ACTIONS.**

5 Any Federal agency which initiates, or causes the initi-
6 ation of, a disciplinary or enforcement action against a certi-
7 fied appraiser for a serious violation of Federal or State law
8 shall report to the Council and to the appropriate approved
9 State appraiser certifying agency—

10 (1) regarding the initiation of such action within
11 45 days after such initiation; and

12 (2) regarding the disposition of such action within
13 45 days after such disposition.

○

Exhibit 3

. ACQUISITION CORP.

Consolidated Cash Flow
Forecast and Projection

Years Ending October 31
(Millions of Canadian Dollars)
Projection not covered by Accountants' Comments

	Reference	Forecast 1988	Projection 1989	Projection 1990	Projection 1991	Projection 1992	Projection 1993	Projection 1994	Projection 1995	Projection 1996	Projection 1997	Projection 1998	Projection 1999	Projection 2000	Projection 2001	Projection 2002	Projection 2003	Projection 2004	Projection 2005	Projection 2006	Projection 2007
Existing Canadian Shopping Centers	Schedule I	56.3	89.0	79.3	89.3	100.1	111.4	124.1	143.4	168.8	193.5	216.8	239.0	261.5	284.5	311.0	346.4	381.0	419.5	438.4	469.4
Canadian Shopping Centers Under Development	Schedule II	(0.8)	(0.2)	2.7	5.1	7.2	9.5	13.0	18.2	19.8	21.6	24.3	29.7	33.3	38.6	42.8	47.4	54.3	62.3	68.3	74.5
Existing U.S. Shopping Centers	Schedule III	6.9	11.9	14.2	17.6	20.7	23.8	27.7	32.0	36.3	44.3	49.9	55.1	60.1	66.7	74.3	82.2	90.2	98.6	106.5	114.2
Toronto-Dominion Centre, Toronto Eaton Centre and Pacific Centre	Schedule IV	23.8	33.2	46.0	58.6	53.2	64.2	69.5	73.4	65.1	95.8	101.9	112.7	123.0	142.4	159.5	165.1	185.9	222.8	235.4	245.2
Other Toronto Office Buildings	Schedule V	4.8	5.9	7.0	4.2	7.4	12.3	14.0	13.8	16.4	18.9	20.6	22.2	23.7	18.1	22.1	30.6	33.4	33.8	39.1	43.4
Alberta Office Buildings	Schedule VI	(0.6)	(4.2)	(5.0)	(3.9)	0.0	4.1	4.9	4.8	7.0	8.0	9.1	6.7	4.0	1.7	8.0	13.3	14.9	13.9	16.8	19.7
Canadian Office Buildings Under Development	Schedule VII	—	0.2	0.4	0.4	0.2	0.2	(0.2)	0.9	2.9	4.8	6.5	6.3	4.8	0.4	4.5	12.1	20.0	29.6	35.6	30.2
Specialty Retail Group		1.0	1.1	1.1	1.2	1.3	1.3	1.4	1.5	1.6	1.7	1.8	1.9	2.0	2.1	2.3	2.4	2.5	2.7	2.9	3.0
Non-Property Specific	Schedule VIII	58.2	41.7	27.5	19.3	1.4	7.2	(1.9)	(13.0)	(46.5)	(43.4)	(128.4)	(128.7)	(132.9)	(136.4)	(152.0)	(168.8)	(188.7)	(233.0)	(278.8)	(316.3)
Cash Flow from All Assets Including Property Assumed Sold		149.5	157.7	173.2	183.8	192.4	234.3	252.5	271.1	292.6	346.4	392.5	343.9	378.6	416.1	471.7	530.7	603.0	641.2	654.2	692.3
Cash Flow Allocable to Property Assumed Sold	Note 9	—	—	—	—	—	—	(18.0)	(35.9)	(58.7)	(89.2)	(140.1)	(178.5)	(201.5)	(221.9)	(252.1)	(265.1)	(327.2)	(364.0)	(384.2)	(403.0)
Cash Flow from Remaining Assets		149.5	157.7	173.2	183.8	192.4	234.3	236.5	235.9	232.9	247.3	152.4	171.4	177.1	195.1	219.6	265.6	276.3	277.2	270.0	289.3
Asset Management Fees	Note 10	(27.6)	(29.7)	(32.1)	(34.6)	(37.2)	(40.8)	(41.1)	(40.5)	(39.3)	(37.8)	(35.5)	(35.4)	(35.5)	(37.0)	(40.7)	(43.9)	(47.4)	(51.9)	(54.6)	(58.5)
JMB Investor Ownership Participation in Annual Cash Flow	Note 11	(3.7)	(3.9)	(4.3)	(4.5)	(4.8)	(20.3)	(21.7)	(25.7)	(27.4)	(28.8)	(18.6)	(9.9)	(5.1)	(5.7)	(6.5)	(7.3)	(8.4)	(9.2)	(10.1)	(10.8)
Cash Flow Before Net Sales Proceeds		118.2	124.1	136.8	144.7	150.4	173.4	173.7	168.7	166.2	180.8	116.3	128.1	136.5	151.6	172.4	194.4	220.5	217.0	205.2	200.0
Investor Debt and Equity	Note 3(a)	1,900.0	1,900.0	1,900.0	1,900.0	1,900.0	2,565.0	2,404.1	2,233.1	2,036.5	1,824.3	1,606.2	1,499.1	1,412.0	1,412.0	1,412.0	1,412.0	1,412.0	1,412.0	1,412.0	1,412.0
Investment Allocable to Property Assumed Sold	Note 12	—	—	—	—	—	(160.9)	(171.0)	(196.0)	(212.3)	(218.0)	(107.1)	(86.3)	—	—	—	—	—	—	—	—
Remaining Investor Debt and Equity		1,900.0	1,900.0	1,900.0	1,900.0	1,900.0	2,404.1	2,233.1	2,036.5	1,824.2	1,606.2	1,499.1	1,412.0	1,412.0	1,412.0	1,412.0	1,412.0	1,412.0	1,412.0	1,412.0	1,412.0
Cash Flow Return on Investor Debt and Equity	Note 13	6.2%	6.5%	7.2%	7.6%	7.9%	6.8%	7.2%	7.6%	8.1%	9.9%	7.2%	6.4%	9.7%	10.7%	12.2%	13.8%	15.6%	15.4%	14.5%	14.2%
Sales Proceeds Net of Property and Corporate Debt and Income Taxes	Note 14	—	—	—	—	—	378.0	440.3	551.4	630.0	702.9	199.4	172.8	—	—	—	—	—	—	—	—
Asset Management Fees on Sales	Note 15	—	—	—	—	—	(21.4)	(28.6)	(37.8)	(46.1)	(53.8)	(25.7)	(25.6)	—	—	—	—	—	—	—	—
JMB Investor Ownership Participation in Net Sales Proceeds	Note 11	—	—	—	—	—	(3.1)	(4.3)	(4.4)	(5.9)	(7.5)	(1.4)	(1.4)	—	—	—	—	—	—	—	—
Net Sales Proceeds		—	—	—	—	—	354.3	413.3	509.4	587.0	641.5	169.3	144.8	—	—	—	—	—	—	—	—
Total Available Cash Flow to Investors Including Return of Investment		118.2	124.1	136.8	144.7	150.4	527.7	587.0	679.1	753.2	822.1	285.6	270.9	136.5	151.6	172.4	194.4	220.5	217.0	205.2	200.0
Cash Flow Return of and on Gross Investment	Note 16	6.2%	6.5%	7.2%	7.6%	7.9%	20.6%	22.9%	26.5%	29.4%	32.1%	11.1%	10.6%	5.3%	5.9%	6.7%	7.6%	8.6%	8.5%	8.0%	7.8%
Internal Rate of Return	Note 17	13.81%																			

See accompanying notes and significant assumptions.

Exhibit 4

[illegible]
SCSHOPT1

[illegible] CENTER

[illegible]

CASH FLOW PRO FORMA

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
INCOME:											
0 TO 1000 SF SPACE	57,488	74,795	76,614	81,172	84,858	87,363	95,972	101,799	104,295	114,304	121,244
1001 TO 3000 SF SPACE	228,514	290,010	297,628	314,195	325,746	336,977	341,852	355,706	401,772	432,007	448,293
3001 SF & UP SPACE	144,962	185,048	198,994	207,525	207,422	223,742	231,777	245,601	289,000	321,795	337,716
GROUND LEASES	21,690	28,028	28,428	28,428	32,853	36,014	35,525	35,427	35,427	35,427	130,175
MINIMUM BASE RENTAL INC.	452,654	577,082	601,663	631,321	650,879	684,097	705,125	738,533	831,294	903,612	1,037,429
CPI RENTAL ESCALATION	1,471	9,295	20,200	21,656	36,547	54,879	69,013	80,239	62,763	62,276	94,066
BASE RENTAL INCOME	454,125	587,177	621,863	652,977	687,426	738,976	774,139	818,772	894,057	965,089	1,131,495
CAM PASSTHRU	42,477	56,214	60,046	64,145	68,530	73,221	78,239	83,609	89,355	95,504	102,004
TAX PASSTHRU	26,069	32,946	33,605	34,277	34,963	35,662	36,375	37,103	37,845	38,601	39,374
INSURANCE PASSTHRU	4,842	6,360	6,742	7,146	7,575	8,029	8,511	9,022	9,563	10,137	10,745
GROSS RENTAL INCOME	527,513	682,697	722,256	758,546	798,494	855,888	897,264	948,505	1,030,820	1,110,131	1,203,697
LESS: VACANCY	52,751	68,270	72,226	75,855	79,849	85,589	89,726	94,851	103,082	111,013	128,370
LESS: RENT CONCESSIONS	3,911	9,720	14,634	40,264	11,574	12,164	22,828	21,995	79,489	34,369	18,098
EFFECTIVE RENTAL INCOME	470,851	604,707	635,397	642,427	707,070	758,135	784,710	831,660	848,248	964,748	1,137,230
OVERAGE RENT	4,167	2,500	0	0	0	0	0	0	0	0	0
EFFECTIVE GROSS INCOME	475,018	607,207	635,397	642,427	707,070	758,135	784,710	831,660	848,248	964,748	1,137,230
OPERATING EXPENSE:											
ADMINISTRATIVE	2,083	2,650	2,809	2,978	3,156	3,346	3,546	3,759	3,985	4,224	4,477
CLEANING	417	530	562	596	631	669	709	752	797	845	895
HVAC	1,417	1,802	1,910	2,025	2,146	2,275	2,411	2,556	2,710	2,872	3,044
LANDSCAPE & PARKING	2,500	3,180	3,371	3,573	3,787	4,015	4,256	4,511	4,782	5,068	5,373
MANAGEMENT	19,001	24,288	25,416	25,697	28,283	30,325	31,388	33,266	33,930	38,598	45,489
MAINTENANCE & REPAIRS	7,083	9,010	9,551	10,124	10,731	11,375	12,057	12,781	13,548	14,361	15,222
PAYROLL	17,500	22,260	23,596	25,011	26,512	28,103	29,789	31,576	33,471	35,479	37,608
UTILITIES	15,417	19,980	21,578	23,305	25,169	27,183	29,357	31,706	34,242	36,982	39,940
ADVERTISING & PROMOTIONS	833	1,060	1,124	1,191	1,262	1,338	1,419	1,504	1,594	1,689	1,791
TOTAL OPERATING EXPENSE	66,251	84,760	89,916	94,499	101,678	108,628	114,933	122,411	129,057	140,110	153,040
FIXED EXPENSE:											
PROPERTY TAXES	26,917	32,946	33,605	34,277	34,963	35,662	36,375	37,103	37,845	38,601	39,374
INSURANCE	5,000	6,360	6,742	7,146	7,575	8,029	8,511	9,022	9,563	10,137	10,745
TOTAL FIXED EXPENSE	31,917	39,306	40,347	41,423	42,537	43,691	44,886	46,124	47,408	48,738	50,119
NET OPERATING INCOME	376,050	483,141	505,135	506,505	562,854	605,815	624,891	663,125	671,783	775,900	933,272
OTHER EXPENSE:											
TENANT IMPROVEMENTS	8,640	26,834	27,840	82,540	27,591	28,218	49,281	80,539	113,912	78,274	29,777
LEASING COMMISSIONS	2,114	7,035	7,324	24,141	7,469	6,869	11,073	22,211	32,096	18,736	8,158
CAPITAL IMPROVEMENTS	41,667	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
NOI BEFORE DEBT SERVICE	324,430	439,271	459,970	389,823	517,794	560,736	554,536	550,375	515,775	668,090	885,336

** 1985 REFLECTS A PARTIAL YEAR BEGINNING 3 / 85 .

THESE ARE PROJECTIONS BASED ON INFORMATION DEEMED TO BE RELIABLE, AND ARE AN ATTEMPT TO PREDICT FUTURE EVENTS BASED ON CERTAIN ASSUMPTIONS.

EXHIBIT 5

PRO FORMA INCOME PROPERTY FORMAT

(Cash Accounting Basis)

I. Expected Receipts
- Base rent (Monthly)
- Index to base rent (Annual adjustment to monthly base)
- Percentage rent (Quarterly estimate with fifth quarter adjustment)
- Amortized tenant improvements (Monthly, fixed)
- CAM (Monthly average with 14th month adjustment)
- Reimburseables (Annual pass through)
- Escalators with stop (Annual review)
- Interest on reserves (Quarterly sweep)
- Government transfer payments (Negotiated and deferred)
- Release of Escrows

II. Loss of Potential Receipts
- Vacancy losses
- Rent collection losses
- Reimbursement collection losses
- Receivables
- Concessions
- Rental Abatements

III. Actual Revenues for Operations

IV Gross Outlays for Operations
- CAM items
- Reimburseables
- Escalator items
- Owner costs
- Refurbishment
- Renewal tenant improvements
- Renewal lease commissions
- Total operating outlays

V. Total Cash from Operations Available for Debt Service

VI. Capital Charges
- Interest payments
- Principal payments
- Capital improvements

VII. Net Cash from Operations before Taxes
- + Transfers from cash reserves from previous period
- + Net increases in loan balances outstanding

VIII. Cash Available for Distribution and/or Taxes
- Less distribution and taxes
- = Net addition to cash reserves in following period