
'HE'S BAAAACK': REGULATOR FROM HELL QUESTIONS APPRAISALS AGAIN

Just when it looked like compliance exams would be the next challenge...

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"The regulators just do not get it!"

That is a statement dozens of clients have made over the last three years. My response has typically been, "Oh, they get it. They just don't care."

Ever the optimist, I felt that over the last few months, the industry had been moving into a period of kinder, and gentler, safety and soundness regulation. As noted in previous blogs, it is also moving into a period of harsher, scarier, and more arbitrary compliance regulation, particularly in the area of unfair and deceptive practices, now "abusive" practices after Dodd-Frank, and fair lending.

That is, until recent communications from several clients, I had reasonably believed that the safety and soundness issues had moderated.

Return of the "examiners from hell"

The "regulators from hell" have reared their ugly head once again.

Though situations raised by community bankers in various parts of the country are different, the arbitrary method by which the field examiners are dealing with the issues are all too familiar.

Should the examiner really be able to second-guess an independent MAI appraisal on a property where the independent MAI appraisal has been subject to an appraisal review under the guidelines, that was also conducted by an independent MAI, all verifying the value of the property?

Is it really appropriate for an inexperienced examiner from out of the area to come in and indicate that the MAI appraisal and review of the property value should be discounted by 80%?

I do not think so.

I am not quite sure how an inexperienced field examiner with no appraisal experience has the ability to second-guess professional appraisers. And keep in mind, these appraisals are not some kind of insider ridiculously high or false appraisals that we may have seen five years ago during the boom times.

Unfortunately, although the examiner may not have the intellectual ability to second guess the appraisals, they certainly believe they have the authority to do so.

Cumulative impact of regulatory overrides

The syndrome isn't new. It's just back again.

All too many banks have experienced the snowball effect that results from arbitrary and capricious decisions by the field examiners, as it relates to asset quality. In the appraisal example set forth above, if the examiner is successful in overruling the MAI real estate appraiser, then what happens?

First, the asset gets written down to the value determined by the examiner. This further reduces equity. Earnings have likely already been destroyed. The bank is no longer augmenting its capital.

It goes on.

Management, who may have been a 1 or a 2 for a long period of time, apparently, in the view of the examiner, has now become "incompetent." The snowball effect.

D.C. déjà vu, all over again

Although the D.C. offices of the federal agencies continue to be in denial about the arbitrary activities of the field examiners as supported by their various regional offices, the beat goes on.

Surprisingly, the D.C. offices seem to continuously request examples of some of the problems.

Examples are not hard to come by.

But they are very hard for the banker to allow me, or anyone else, to present to the regulators for fear of retaliation.

Of course, there are rules against retaliation for challenging an examination finding.

There are also rules against being arbitrary and capricious.

All those rules seem to be set aside out in the field.

FDIC reminds bankers to squawk

Fortunately, the FDIC, in particular, has reminded banks of their ability to appeal examinations. As noted in previous blogs, we have a number of appeals of examination findings pending in our office, for everything from classifications to CAMELS ratings and components ratings.

The results so far have been mixed. Will the agency always support the field examiner? We will see.

In any event, it seemed that the industry was moving into a period of kinder and gentler safety and soundness regulation.

I would still like to believe that-but what I have seen from the field over the last two months across the nation would indicate that is not the case.

Has your organization seen more of the appraisal trend that Jeff writes about here? Share your experiences. (Anonymous posts will be considered.)

About the Author

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