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Appraisal Subcommittee

Federal Financial Institutions Examination Council

January 17, 2001

Appraisal Standards Board
The Appraisal Foundation
1029 Vermont Ave., NW, Suite 900
Washington, DC 20005-3517

Dear Appraisal Standards Board:

The Appraisal Subcommittee (“ASC”) staff is pleased to provide comments regarding your “Concept Paper – Confidentiality As It Relates to USPAP.” We will address the specific questions raised in your concept paper, as well as some related general issues.

As a preface to our specific comments, it is important for the Appraisal Standards Board (“ASB”) and members of the appraisal profession to consider that the ASB and USPAP, because of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (“Title XI”), are subject to certain “public policy” responsibilities. Because of Title XI’s incorporation of the ASB and USPAP, USPAP is somewhat comparable to a Federal agency regulation or policy. Accordingly, the ASB has a responsibility to consider and support public policy issues set forth by Federal statute, regulation, and case law.

Through a number of recent statutory, regulatory, and judicial actions, public policy regarding the confidentiality of personal consumer information has been established clearly. As identified in your concept paper, the Gramm-Leach-Bliley Act (“Act”) and the resulting Federal regulations (including those of the Federal financial institution regulatory agencies (“Agencies”) and the Federal Trade Commission (“FTC”)) highlight the public policy regarding this subject. This policy is that personal consumer information should be treated as confidential unless it is exempted or waived following appropriate procedures. It is important that the ASB consider and support this public policy in its actions.

We do not believe it necessary that USPAP incorporate the privacy/confidentiality provisions of the Act and its implementing regulations. It is important, however, that USPAP not conflict with those provisions and that it support this public policy.

What information is confidential? – In normal business activities, appraisers obtain large amounts of personal consumer information that consumers have a right to expect will be treated confidentially. In some cases, the appraiser and the consumer have a “client relationship,” such as when the consumer contracts directly with an appraiser for appraisal services. In other cases, the consumer is a “third-party” to a contract between the appraiser and a client (such as a financial institution). In these third-party cases, the client provides some information to the appraiser, and the appraiser obtains other information independently. Nonetheless, the consumer has the right to expect that all personal information will be treated confidentially, regardless of how the appraiser obtained the information.

Who bears the responsibility to authorize release of the information? – Once an appraiser obtains personal consumer information, the appraiser must determine whether, under

what circumstances, and to whom, the appraiser can release that information. This is where the FTC and Agencies' regulations come into play. Appraisers must comply with applicable Federal and State statutes, regulations, policies, and the like. Therefore, at a minimum, appraisers must determine the applicability of the FTC and Agencies' regulations as they apply to each situation and each piece of personal consumer information. In some cases, the appraiser may be able to rely on information (such as consumer waivers) provided by a financial institution. Nonetheless, the appraiser is responsible for ensuring that the financial institution has the waivers, and must not assume that it does.

To what extent do laws and regulations of the Federal Trade Commission and other Federal or State Agencies that impact confidentiality supersede the requirements in USPAP? – Generally speaking, formal regulations issued by a Federal agency would supersede conflicting USPAP provisions. USPAP's provisions are not legally equivalent to Federal regulations. USPAP, as a document specified and required by Federal statute, generally would supersede conflicting State laws. Potential conflicts between USPAP and Federal or State law would have to be evaluated on a case-by-case basis.

What is the best way to modify USPAP to address disclosure of confidential information received from consumers? – We believe that USPAP should take the position that all personal consumer information is confidential, unless otherwise exempted or waived following appropriate procedures. USPAP should make clear that it is the appraiser's responsibility to comply with applicable Federal and State statutes and regulations, and refer the appraiser to the more applicable statutes and regulations, such as the FTC and Agencies' regulations.

[Should the ASB] remove the current definition of confidential information, and retire or modify Statement 5. – No, the ASB should not remove USPAP's definition of confidential information. Much of the information obtained by appraisers is personal consumer information to which consumer have a right to expect confidential treatment. Yes, the ASB needs to retire, or appropriately modify, Statement 5.

[Should the ASB] revise the definition of confidential information to reflect the effect of legislative and regulatory actions, and retire or modify Statement 5. – Yes, the ASB should revise USPAP's definition of confidential information to correspond to current public policy, as discussed above. Yes, the ASB needs to retire, or appropriately modify, Statement 5.

[Should the ASB] revise the definition of confidential information, plus the confidentiality section of the ETHICS RULE, to ensure recognition of obligations under law or regulation, and retire or modify Statement 5. – Yes, the ASB also should revise the confidentiality section of the Ethics Rule to make appraisers aware of their obligations, as discussed above.

We appreciate the opportunity to provide comments regarding this issue. If you have any questions regarding our staff comments, please let me know.

Sincerely,

Ben Henson
Executive Director