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# Appraisal Subcommittee

*Federal Financial Institutions Examination Council*

August 27, 2004

The California Performance Review  
c/o Office of Governor Arnold Schwarzenegger  
State Capitol  
Sacramento, CA 95814

Dear Sir or Madam:

We recently learned about the publication of your report, *Government for the People for a Change*, otherwise known as the "California Performance Review." Chapter 9, I. of the report contains a recommendation that, if adopted, would transfer the Office of Real Estate Appraisers ("OREA") from the Business, Transportation and Housing Agency to the Department of Commerce and Consumer Protection, under the Undersecretary for the Real Estate Division. That Undersecretary also would supervise the Department of Real Estate.

Because of the Savings and Loan Crisis in the late 1980's, Congress passed legislation subjecting the real estate appraisal profession to Federal oversight. That legislation, Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, ("Title XI"), among other things, established the Appraisal Subcommittee ("ASC"). The ASC is a Federal agency that oversees the operations of all State appraiser regulatory agencies, including OREA, to ensure that they conform to Title XI. The ASC has concerns about the Report's recommendation to transfer OREA to the Department of Commerce and Consumer Protection, under the Undersecretary for the Real Estate Division and requests that you consider ASC Policy Statement 1 when making organizational changes affecting OREA.

ASC Policy Statement 1 sets out our standards regarding the structure and independence of State appraisal regulatory agencies. ASC Policy Statements interpret Title XI. The Policy Statement, in pertinent part, states:

The ASC does not impose any particular organizational structure upon the States. It is recognized that each State may have legal, fiscal, regulatory or other valid constraints that determine the structure and organization of its [State appraiser regulatory agency ("State agency")]. States, however, should adopt and maintain an organizational structure for appraiser certification, licensing and supervision that avoids conflicts of interest or the appearance of such conflicts. Ideally, States should maintain totally independent State agencies answerable only to the governor or a cabinet level official who has no regulatory responsibility for real estate licensing/certification, promotion, development or financing functions ("realty related activities"). A State, however, may choose to locate its State agency within an existing regulatory body. Any State with its appraiser regulatory function in a department that regulates realty related activities must ensure that adequate safeguards exist to protect the independence of the appraiser regulatory function.

A State agency may be headed by a board, commission or individual. The organizational structure should provide maximum insulation for the State agency from the influence of any industry or organization whose members have a direct or indirect financial interest in the outcome of the agency's decisions.

Persons appointing officials to a State agency should not be associated or affiliated with an affected industry, *i.e.*, they should not have a direct or indirect financial interest in realty related activities. A State agency head, appointed by the governor and confirmed by the State legislature, would generally be considered independent.

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The ASC strongly urges that State agency decisions, especially those relating to license or certificate issuance, revocation and disciplinary actions, not be made by State officials who also are responsible for realty related activities. State officials should accept and implement the actions of the appraiser board unless they are inconsistent with the public interest and trust. Additionally, such State agency decisions should be final administrative actions subject only to appropriate judicial review.

Please contact us if you have any questions.

Sincerely,

Ben Henson  
Executive Director

cc: Anthony F. Majewski, Acting Director, OREA