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Appraisal Subcommittee

Federal Financial Institutions Examination Council

April 17, 1998

James F Hinchman
Acting Comptroller General
Comptroller General of the United States
Washington, D.C. 20548

Dear Mr Hinchman:

The Appraisal Subcommittee of the Federal Financial Institutions Examination Council (“ASC”) requests a decision on whether certain fees collected by the States, territories, and the District of Columbia (“States”) on behalf of the ASC are Federal funds that must be forwarded expeditiously to the ASC and must not be held or used by State officials or State governmental entities except to effect the funds’ prompt transfer to the ASC. We are making this request now because, as discussed below, a disagreement exists on this issue between the ASC and the State of California.

Introduction and Background

The ASC was created on August 9, 1989, by Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (“Title XI”). 12 U.S.C. 3310 and 1102-1123. A copy of Title XI is attached. Title XI’s purpose is to “provide that Federal financial and public policy interests in real estate transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.” 12 U.S.C. 3331. In general, the ASC monitors the real estate appraisal process as it relates to federally related transactions, as defined in Title XI.

The ASC, among other things, is required by § 1103 of Title XI, 12 U.S.C. 3332 to:

- Monitor the requirements established by the States for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility. The ASC reviews each State’s appraiser regulatory agency (“State agency”) to determine its compliance with Title XI’s requirements and is authorized by Title XI to take action against non-complying States; and
- Maintain a national registry of State licensed and certified appraisers (“National Registry”) who may perform appraisals in connection with federally related transactions.

Statement of Disagreement

California has approximately 10,500 State certified and licensed appraisers. It, by far, has the largest number of appraisers, with the national total about 80,000. California’s Office of Real Estate Appraisers (“OREA”) collects four years of certification or licensing fees, including National Registry fees — \$100 — from each appraiser. Upon the fee’s payment, OREA issues the appraiser a certification or license for the entire four-year term. OREA, however, forwards to us only \$25 at the beginning of each year during the appraiser’s four-year certification or licensing term. Under California law, the remaining balance is to be placed in “The Real Estate

Appraisers Regulation Fund” in the State Treasury. CAL. BUS. & PROF. CODE § 11410. OREA refuses to forward National Registry fees to us in a manner consistent with Title XI and ASC Policy Statement 8. We have exchanged correspondence with OREA on this issue and have attached copies for your convenience.

Funding Authorities

Sections 1108, 1109, and 1122 of Title XI, 12 U.S.C. 3337, 3338, and 3351, respectively, set out how the ASC is funded and how its funds can be used. The provisions first instruct the Secretary of the Treasury to provide a one-time payment of \$5 million to the ASC on August 9, 1989, to fund its start-up costs. Repayment of this amount is required by no later than September 30, 1998. All start-up funds, in fact, have been repaid, with the last payment being made at the end of March 1998. After start-up, the costs of ASC operations are funded through “the collection of registry fees from certain certified and licensed appraisers” 12 U.S.C. 3337(a). Each appraiser who is authorized by a State to perform appraisals in connection with federally related transactions must pay to the ASC, through the appraiser’s licensing or certifying State, an annual \$25 fee for being listed on the ASC “National Registry of State Certified and Licensed Appraisers.” State agencies are required by § 1109(a)(2) of Title XI, 12 U.S.C. 3338(a)(2), to transmit those fees to us. The ASC has been operating on National Registry fees since June 1994.

Under § 1109(b) of Title XI, 12 U.S.C. 3338(b), the ASC is authorized to use its funds to:

- (1) [M]aintain the [National Registry];
- (2) [S]upport its activities under this title;
- (3) [R]eimburse the general fund of the Treasury for amounts appropriated to and expended by the [ASC] . . . ; and
- (4) [M]ake grants in such amounts as it deems appropriate to the Appraisal Foundation, to help defray those costs of the foundation relating to the activities of its Appraisal Standards and Appraiser Qualification Boards.

Specific National Registry Statutory Provisions and Related ASC Policy Statements

Section 1109(a) of Title XI, 12 U.S.C. 3338(a), states:

Each State with an appraiser certifying and licensing agency whose certifications and licenses comply with this title, shall—

- (1) transmit to the Appraisal Subcommittee, no less than annually, a roster listing individuals who have received a State certification or license in accordance with this title; and
- (2) collect from such individuals who perform or seek to perform appraisals in federally related transactions, an annual registry fee of not more than \$25, such fees to be transmitted by the State agencies to the Council on an annual basis

The ASC has adopted ten Policy Statements to assist the States in complying with Title XI. These Policy Statements effectively are formal ASC interpretations of Title XI. The ASC adopted the policy pertinent here, *Statement 8: National Registry of State Certified and Licensed Appraisers*, on September 22, 1997. The ASC adopted this Statement because it believes that

National Registry fees are Federal funds, and that each State collects the fees as the ASC's, *i.e.*, the U.S. Government's, agent. We took the view that our interpretation of Title XI's provisions regarding National Registry fees should be consistent with Federal public policy as stated in 31 U.S.C. 3302, the "miscellaneous receipts provision." This provision generally requires any person in possession of Federal funds to turn over those funds to the Government within three days of receipt.

Because of the importance of Statement 8, we have chosen to incorporate certain portions in this letter:

A. General Roster and Registry Fee Requirements

Title XI requires the States to transmit to the ASC no less than annually: (1) a roster listing individuals who have received a State certification or license to perform appraisals and (2) a \$25 Registry fee from individuals who have received certification or licensing. Fee and roster requirements apply to all individuals who receive State certifications or licenses originally or by reciprocity, whether or not the individuals in fact are performing, or plan to perform, appraisals in federally related transactions. If an appraiser is certified or licensed in more than one State, the appraiser is required to be on each State's roster of certified or licensed appraisers and a Registry fee is due from each State in which the appraiser is certified or licensed.

Only appraisers on the National Registry are eligible to perform appraisals in connection with federally related transactions

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B. Description of National Registry

The ASC has provided the States with detailed specifications regarding the data elements that comprise the Registry and related reporting procedures. States must use systems for data input and maintenance that recognize specifications of the ASC system to ensure system compatibility.

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C. Registry Fee Policies

Each State must remit to the ASC a National Registry fee on an annual basis for each State certified or State licensed appraiser listed on the National Registry. The annual fee for each certified or licensed appraiser is \$25. Fees will not be prorated or refunds granted for partial year registrations. Unless an appraiser is recorded in the Registry, that individual is not eligible to perform appraisals in connection with federally related transactions. **If a State issues multiple-year certifications and licenses and collects multiple-year fees, the State must remit to the ASC the total amount of the multiple year National Registry fees** [Emphasis in original.]

Upon receipt of a State's data submission, the ASC will process the data for inclusion in the National Registry. At the end of each month, the ASC will generate an invoice based on the data submissions received during the month from the State and will forward the invoice, with explanatory information, to the State. The State should review the invoice for accuracy immediately upon receipt and notify the ASC of any questions. The State must pay the invoice within 45 days from the invoice date. Interest will accrue on any unpaid amounts as specified by Federal law

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D. Data Submission Policies

The Registry's value and usefulness are largely dependent on the quality and frequency of State collected data. Accurate and frequent data submissions from all States are necessary to maintain an up-to-date Registry. **States must submit appraiser data to the ASC no less frequently than monthly.** If a State's data does not change during the month, the State agency must notify the ASC of that fact in writing. We encourage States to submit data as frequently as possible, up to daily. Each data submission must include the State's complete Registry-related appraiser database. This complete submission will be compared against existing Registry data to update appraiser information and to calculate Registry fees for generating invoices. [Emphasis in original.]

ASC Policy Statement 9, which concerns information sharing, adds that "it is critical for State agencies to report expeditiously to the ASC any disciplinary action taken against an appraiser. At a minimum, this information must be submitted with the State's monthly, or more frequent, Registry data submission. For the most serious disciplinary actions, *i.e.*, suspensions and revocations, we strongly encourage the State to notify us immediately, and we will update the Registry database. States with Internet e-mail accounts will receive automated notification of all suspensions and revocations."

Conclusion

In sum, we believe that National Registry fees are Federal funds that must be forwarded to the ASC by California as specified by ASC Policy Statement 8 and request your prompt decision regarding this matter.

Please do not hesitate to contact Marc L. Weinberg, the ASC's General Counsel, at 202-634-6520 or by Internet at marcw1@asc.gov, if you have further questions.

Sincerely,

Herbert S. Yolles
Chairman

Attachments