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Appraisal Subcommittee

Federal Financial Institutions Examination Council

April 10, 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 the ASC is an appropriated or non-appropriated agency. We are making this request now because, as discussed below, the ASC recently fully repaid its start-up funding to the Secretary of the Treasury and is fully funded by "National Registry fees" collected under the authority of Federal statute. This request also was induced by a finding in a recent "audi scoping review" letter of the Inspectors General of the Board of Governors of the Federal Reserve System, the Department of the Treasury, Federal Deposit Insurance Corporation, and the National Credit Union Administration, which is attached for your convenience.

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. Section 1102 of Title XI, 12 U.S.C. 3310, amended the Federal Financial Institutions Examination Council Act of 1978, 12 U.S.C. 3301 *et seq.*, by establishing the ASC within the Federal Financial Institutions Examination Council ("FFIEC"). The FFIEC consists of the Comptroller of the Currency ("OCC"), the Chairman of the Board of Directors of the Federal Deposit Insurance Corporation ("FDIC"), a Governor of the Board of Governors of the Federal Reserve System ("FRB") (designated by the Board Chairman), the Director of the Office of Thrift Supervision ("OTS"), and the Chairman of the National Credit Union Administration ("NCUA"), collectively, the Federal financial institutions regulatory agencies ("Agencies"). 12 U.S.C. 3303. The FFIEC's purpose is to prescribe principles and standards for the Federal examination of financial institutions and to make recommendations to promote uniformity in the supervision of these financial institutions. 12 U.S.C. 3301. The FFIEC is funded equally by each of its constituent agencies pursuant to 12 U.S.C. 3304.

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 has six member , each designated respectively by the heads of the Agencies and the U.S. Department of Housing and Urban Development ("HUD"). The HUD member was added to the ASC by § 142(e) of the Department of Housing and Urban Development Reform

Act of 1989. 12 U.S.C. 1708(e). Section 1103 of Title XI, 12 U.S.C. 3332, sets out the ASC's general responsibilities:

- Monitor the requirements established by the States, territories and the District of Columbia (“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;
- Monitor the requirements established by the Agencies regarding appraisal standards for federally related transactions and determinations of which federally related transactions will require the services of State licensed or State certified appraisers;
- Maintain a national registry of State licensed and certified appraisers (“Registry”) who may perform appraisals in connection with federally related transactions;
- Monitor and review the practices, procedures, activities and organizational structure of the Appraisal Foundation; and
- Transmit an annual report to Congress regarding the activities of the ASC during the preceding year.

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” 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.” If further funds are needed, Title XI specifically provides that “funds available to the [Agencies] *may* be made available to the [FFIEC] to support the council’s functions under [Title XI]. [Emphasis added.]” And, finally, any additional funds “*may* be made available . . . only if authorized and *appropriated* by law.” [Emphasis added.] The ASC has been operating on 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 [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.

Staffing Authorities

Section 1105, 12 U.S.C. 3334, specifically authorizes the ASC's Chairperson to "appoint such officers and staff as may be necessary to carry out [Title XI's] functions consistent with the appointment and compensation practices of the [FFIEC]." ¹ The FFIEC appointment and compensation authorities are contained in 12 U.S.C. § 3307. That section, among other things, authorizes the FFIEC to:

[U]tilize, with their consent and to the extent practical, the personnel, services and facilities of the Federal financial institutions regulatory agencies, Federal Reserve banks, and Federal Home Loan Banks, with or without reimbursement therefor.

* * *

In addition, the Council *may* -- (1) subject to the provisions of title 5 relating to the competitive service, classification, and General Schedule pay rates, appoint and fix the compensation of such officers and employees as are necessary . . . [Emphasis added.]

Since its inception, the FFIEC has not hired and paid staff in the "direct" manner authorized above. Instead, it has decided to rely on the "detailee" method to staff its operations. Each FFIEC staff member is detailed to the FFIEC, often for many years, from the member's home Agency and is paid according to the pay scale and provided with the benefits of the home Agency.

The ASC, on the other hand, has hired and paid staff in the direct manner. Each employee is hired under 5 U.S.C. and is paid according to "usual" U.S. Government practices. Indeed, this method was chosen because, in 1990, the ASC's Chairperson requested the FFIEC's Legal Advisory Group ("LAG") for a legal opinion on whether the funds provided by Congress for the operation of the ASC and the moneys collected by the States and forwarded to the ASC for the use of the ASC are appropriated funds under your interpretations. The LAG concluded that ASC funds

¹A Congressional conference arrived at the language of § 1105 after reconciling the House and Senate versions (H.R. 1278 and S. 774) of FIRREA. Section 1104 of the House's immediate predecessor bill to Title XI, H.R. 1278, *see* H.R. Rep. No. 101-54, part 1, 101st Cong., 1st Sess. 269 (1989), differed substantially from § 1105 of Title XI:

The Chairman of the Appraisal Subcommittee shall, subject to the provisions of title 5 of the United States Code relating to the competitive service, classification and General Schedule pay rates, appoint such officers and staff as may be necessary to carry out the functions of this title.

Section 1411(d) of the Senate's immediate predecessor bill to Title XI, S. 774, *see* S. Rep. No. 101-19, 101st Cong., 1st Sess. 292 (1989), was almost identical to Section 1104 of H.R. 1278.

are appropriated, and that the ASC is an appropriated agency. We have included copies of the relevant memoranda for your information.

We would appreciate your prompt attention to our request. Please do not hesitate to contact Marc L. Weinberg, the ASC's General Counsel, at 202-634-6520 or by Internet at marcwl@asc.gov, if you have further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Herbert S. Yolles". The signature is fluid and cursive, with the first name being the most prominent.

Herbert S. Yolles
Chairman

Attachments