

□ □ □ □ □ □

Appraisal Subcommittee

Federal Financial Institutions Examination Council

July 23, 2003

The Honorable Katherine Harris
House of Representatives
Washington, DC 20515-0913

Dear Congresswoman Harris:

Thank you for your recent letter regarding qualifying, testing, licensing, and regulating real estate appraisal instructors, which we received on July 18, 2003. In your letter, you state your understanding that the Appraisal Foundation has developed a mandatory course for State licensed and certified real estate appraisers, and that if a real estate appraiser failed to take or pass that course, the appraiser would no longer be allowed to teach real estate appraisal courses. You further stated that this seems to be in direct conflict with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, ("Title XI") which gave this authority to States. You requested that we look into this situation.

Title XI created a unique regulatory framework for real property appraisers. Various authorities were assigned to the Federal financial institution regulatory agencies, States, and the two board of the Appraisal Foundation: the Appraiser Qualifications Board ("AQB"); and the Appraisal Standards Board ("ASB"). The Appraisal Subcommittee ("ASC") was created by Title XI to oversee the implementation of Title XI by these various entities.

The AQB was given authority to determine the minimum qualifications (*i.e.*, education, experience, and examination) an appraiser must have before appraising in Federally related transactions. The ASB was authorized to establish uniform standards of appraisal practice (*i.e.*, Uniform Standards of Professional Appraisal Practice) that appraisers must follow when appraising these transactions. The States were charged with ensuring that it certified only appraisers who met the AQB's minimum criteria and that those appraisers followed the uniform standards, when applicable.

We are familiar with the AQB's Certified USPAP Instructor program and believe that it is within the AQB's Title XI-granted authority and a reasonable approach to helping meet its responsibilities under that statute. In the following Background section, we provide much more information regarding this issue.

Regarding your concern about the location of the courses offered by the Appraisal Foundation, the Foundation has offered the course 25 times since February 1, 2002, and has at least two additional offerings scheduled. The Foundation has offered the course in all regions of the United States in an effort to make the course as available to the greatest possible number of

potential instructors. The courses have been offered in major population centers and airline hub cities.

BACKGROUND:

In 1999 and 2000, the AQB initiated a project to improve the quality of Uniform Standards of Professional Appraisal Practice (“USPAP”) education. This AQB initiative resulted from concerns expressed by Federal and State agencies regarding the apparent poor knowledge of USPAP by practicing appraisers. This project included such initiatives as requiring USPAP instructors to take a USPAP instructor course and pass an examination to document their USPAP knowledge. Another initiative was the requirement that, beginning in 2003, all USPAP education providers must teach the AQB’s Uniform USPAP Course, or its equivalent.

These initiatives went through a rigorous public exposure process analogous to formal rulemaking under the Administrative Procedures Act, 5 U.S.C. § 553. On March 14, 2000, the AQB issued for public comment a memorandum entitled, Request for Comment: Mandating Improved and Consistent USPAP Instruction; on May 10, 2000, the AQB issued its first Exposure Draft proposing for public comment the above initiatives; and, on September 1, 2000, the AQB issued a second Exposure Draft for public comment. The AQB adopted the initiatives on October 27, 2000. We believe the AQB’s efforts to improve USPAP education were well-reasoned and supportable.

The AQB’s criteria, modeled after other licensed professional association practices, are applied equally to all appraisers and appraiser education providers.

In connection with your concerns regarding the Appraisal Foundation, we have enclosed a copy of the June 11, 2002 formal legal opinion of the Legal Advisory Group (“LAG”). The discussion regarding Issue No. 1, beginning on page 2 of the opinion, addresses the AQB’s authority under Title XI. The LAG consists of the General Counsel of the Federal Deposit Insurance Corporation, the General Counsel of the Board of Governors of the Federal Reserve System, the Chief Counsel of the Office of the Comptroller of the Currency, the Chief Counsel of the Office of Thrift Supervision, and the General Counsel of the National Credit Union Administration, the constituent agencies of the Federal Financial Institutions Examination Council. We asked LAG for this opinion, among other things, to address issues regarding the Appraisal Foundation’s authority to adopt certain mandatory minimum educational qualification requirements for certified real estate appraisers.

Additionally, in May 2003, the General Accounting Office issued a report, *Opportunities to Enhance Oversight of the Real Estate Appraisal Industry* (GAO-03-404), culminating more than one year of investigation into the appraiser regulatory framework created by Title XI. You may obtain a copy of that report at <http://www.gao.gov/new.items/d03404.pdf> - 1839.9KB - GAO Reports. In the report, GAO specifically discussed the Appraisal Foundation’s authority to set certain appraisal

standards and qualifications. GAO cited the Legal Advisory Group's opinion and attached it to the report. GAO did not report any abuses of its legal authority by either the AQB or its counterpart, the Appraisal Standards Board.

To provide additional information about these issues, we have attached a background document detailing many facts regarding your concerns. This document was provided to LAG when we made our formal request for a legal opinion.

Please contact us if you have further questions.

Sincerely,

Ben Henson
Executive Director

Enclosures

cc: Roberta Caraceni