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Appraisal Subcommittee

Federal Financial Institutions Examination Council

July 29, 1998

Carl Dutch
The Chicopee Group
P.O. Box 3811
Boardman, OH 44513

Dear Mr. Dutch:

This letter responds to your July 7, 1998 letter, which we received on July 13, 1998. In your letter, you outline two situations that concern you and, possibly, other independent course providers. The first situation relates to the Appraisal Foundation's ("Foundation") creation of a course module for teaching the Uniform Standards of Professional Appraisal Practice ("USPAP"), which will be made available to State appraiser regulatory agencies, Foundation sponsors, and other course providers. The second situation pertains to the Appraisal Standards Board ("ASB") training USPAP instructors from Foundation sponsors, who, in turn, would teach USPAP seminars. You would welcome these two initiatives, but are concerned about potential unfair effects on independent course providers. In that regard, you asked: "Is it . . . the spirit of [Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("Title XI")] to exclude independent course providers from teaching USPAP by charging different costs for the [Foundation's] copyrighted materials, based upon membership in their private organization? Is it also the intent of this law to permit the establishment of [Foundation] sponsoring member education as the only 'approved' source of USPAP education?"

The short answer to your questions is that Title XI and its legislative history do not directly address your concerns. It is also clear that Title XI does not implicitly or explicitly authorize the Foundation to exclude independent course providers from the marketplace. Title XI, however, recognizes the Foundation and the ASB (and Appraiser Qualifications Board) and provides them with special expert status and essentially lawmaking power. As you noted, the Foundation is a private organization. It has sponsors who pay annual dues to obtain the rights and privileges associated with sponsor status. It is not unusual, nor necessarily improper, for an organization to offer to its members discounted rates for goods and services. This, of course, does not extend to unfair restraint of trade practices.

At this time, we are unaware of the Foundation's specific plans regarding training instructors for a potentially State-required USPAP instructor training course. We believe that, if such a course were offered, the Foundation should make it available to all interested parties and not just to its sponsors.

If you have any questions, please contact us. We understand that you will be sharing this letter with other independent course providers. You also should know that we will be posting this letter, together with your letter, on our Internet Web site, www.asc.gov, for public information.

Sincerely,

Ben Henson
Executive Director