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August 9, 2002

Ben Henson, Executive Director
The Appraisal Subcommittee
2000 K Street, N.W. - Suite 310
Washington, DC 20006

RE: concerns about the Appraisal Subcommittee's plan to apply a special label to some licensed appraisers on the National Registry

Dear Mr. Henson

Upon reading the Subcommittee's July 12, 2002, letter announcing its labeling plan, the Board was astonished. Despite the plan's 21 Century date, its provisions echoed the scarlet letter "A" of 19th Century fiction and the Jim Crow laws and the McCarthy hearings of the 20th Century. The Board wondered what could possibly have provoked the Subcommittee to attack a; small group of fewer than 3,000 appraisers (fewer than 5% of appraisers listed on the National Registry) and six states with a plan to use the force of a government list to discourage lenders from using duly licensed appraisers? The Subcommittee offered no proof that any single appraiser it seeks to label ever performed a poor appraisal. If the Subcommittee can not show that the work of these licensed appraisers has resulted in defaulting on loans, why does it seek to paint duly licensed appraisers with a scarlet "A?" If it can show that a licensed appraiser's work had such a result because of having not met AQB criteria, then the appropriate solution is disciplinary action against that individual's license, not painting all licensed appraisers with abroad brush.

The Board believes the Subcommittee should rescind this labeling plan for three reasons. First, Title XI offers no authority for the Subcommittee's labeling plan. The relevant provisions of Title XI are Sections 1103(a) (3); 1109(a) (1) & (b) (1), and 1116 (c) & (e):

SEC. 1103. Functions of Appraisal Subcommittee

[12 U.S.C. 3332]

(a) In general. The Appraisal Subcommittee shall –

(3) maintain a national registry of State certified and licensed appraisers who are eligible to perform appraisals in federally related transactions; and

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SEC. 1109. Roster of State certified or licensed appraisers; authority to collect and transmit fees (12 U.S.C. 3338]

(a) In general. 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

(b) Use of amounts appropriated or collected. Amounts appropriated for or collected by the Appraisal Subcommittee under this section shall be used: to maintain a registry of individuals who are qualified and eligible so perform appraisals in connection with federally related transactions;

SEC. 1116. Certification and licensing requirements [12 U.S.C. 3345)

(c) Definition. As used in this section, the term "State licensed appraiser" means an individual who has satisfied the requirements for State licensing in a State or territory.

(c) Authority of the Appraisal Subcommittee. The Appraisal Subcommittee shall not set qualifications or experience requirements for the States in licensing real estate appraisers, including a de minimus [sic] standard. Recommendations of the Subcommittee shall be nonbinding on the States.

Those provisions of Title XI expressly:

1. reserve the setting of criteria for licensed appraisers to the states;
2. forbid the Subcommittee to set criteria for licensed appraisers;
3. make any recommendations that the Subcommittee makes about criteria for licensed appraisers "nonbinding on the states;" and
4. require the Subcommittee to place on the National Registry the names of all licensed appraisers the states provide to it without qualification or limiting denotations except classification name.

Title XI does not authorize the Subcommittee to create limiting denotations for appraisers other than. by classification name. The Subcommittee's labeling plan can only be interpreted as an underhanded effort to force the Subcommittee's preferred criteria on the states. Even if the Appraisal Qualification Board's (AQB) criteria for licensed appraisers were desirable, the Subcommittee has no legal authority to seek to force states to adopt them in this backhanded manner,

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Second, another provision of Title XI has important relevance. Section 1122 (d) provides:

Prohibition against discrimination. Criteria established by the Federal financial institutions regulatory agencies, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Resolution Trust Corporation for appraiser qualifications in addition to State certification or licensing shall not exclude a certified or licensed appraiser for consideration for an assignment solely by virtue of membership or lack of membership in any particular appraisal organization.

Before Title XI many lenders often selected members of particular trade associations because of their assumption that such memberships would help to assure better appraisals. Lenders often made those assumptions based on the image the trade association projected rather than factual analysis of the quality of the work of its individual members. In Title XI Congress expressly rejected such criteria as no longer appropriate since appraisers must be licensed or certified by the state. Instead, in choosing appraisers, lenders are to focus on the competency of the individual licensed or certified appraiser, not his or her professional affiliations.

Congress placed no limitation on the state regulators in licensing appraisers. Thus, a state can choose criteria for its licensed appraisers that are different than the AQB 's criteria (either more or less stringent). Even if empirical data justified some action against this small group of appraisers the Subcommittee has targeted, the Subcommittee's labeling plan only reverts to using those same, old, tired image assumptions that Congress expressly rejected. The Subcommittee appears to believe that since the AQB is a subdivision of a trade association cited in Title XI, its criteria must be better than anyone else could devise. Like the lender's assumptions, the Subcommittee's assumption is also based on image, not substance. The AQB's criteria is no less arbitrary and capricious than any of the old line trade associations. The Subcommittee has offered no empirical data to prove that the appraisers it has targeted are performing appraisals with less accuracy or in such a manner as to cause loans to fail more frequently.

Third, in its July 12 letter, the Subcommittee offered as justification for its labeling plan against its targeted small group of appraisers only statements that (a) the lawfully adopted criteria they met to obtain a licensed classification "might not conform to the Criteria" of the AQB and (b) the public had a right to "full disclosure of an appraiser's credentials."

TYPE OF PROGRAM AND METHOD OF ADOPTION?

1. Since the letter announcing the labeling proposal cites no enforcement mechanism and since the Board can find none in Title XI, how can the Subcommittee make it mandatory that state's

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participate in the labeling plan and label any appraiser other than as the state chooses?

2. Since the Subcommittee asserted the intent of its labeling proposal is to provide "fail disclosure to the public," why was the labeling proposal adopted in secret or closed meetings and apparently without seeking any input from state regulators?
3. If "full disclosure to the public" of an appraiser's credentials is beneficial, would not disclosing the numbers of assignments an appraiser has undertaken without complaint be of more benefit to lenders than whether the appraiser has met AQB criteria? Having met AQB criteria is no guarantor of quality work product. If it were, states would never have to suspend or revoke the classifications of certified appraisers who have met AQB criteria.

EMPIRICAL DATA DEFINING THE PROBLEM

4. Does the Subcommittee have empirical data that proves that jurisdictions that have not adopted the AQB criteria for licensed appraisers have licensed appraisers who are performing sub-standard appraisals solely because they have not met those criteria? If so, please share that data with all states.
5. What evidence did the Subcommittee gather that suggests the "public" desires or even needs the protection of this labeling proposal? If any, please share it with all states.
6. If some member(s) of the public asked for this labeling proposal, did the Subcommittee consider simply telling that requestor(s) that it could make its own determination of whether a licensed appraiser has met AQB criteria by comparing the AQB criteria to a state's prescribed criteria?

SCOPE OF PROBLEM

7. Since the presumed problem is in only six jurisdictions, why does the Subcommittee's proposal call for a nationwide labeling system?
8. If a non-AQB criteria" state deems its criteria superior or more stringent than the AQB's criteria, is the state's determination final? The Board believes Title XI clearly says, "Yes." Does the Subcommittee disagree?

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9. Since the AQB's criteria might reasonably be described as a "moving target," on the basis of which AQB criteria would a state label a licensed appraiser - the criteria in effect when the appraiser became licensed, or the criteria in effect now, or the AQB's currently proposed increases?
10. In its February, 2002, Exposure Draft increasing criteria for all classifications, the current AQB argues that the first AQB set its criteria largely to assure an adequate number of practitioners. Because of the first AQB's presumably deficient understanding of "minimum qualifications," the current AQB argues that it now needs to increase the minimum criteria. If a licensed appraiser met the 1991 criteria, under the Subcommittee's labeling plan we are told such a licensed appraiser will be labeled as meeting AQB criteria. Yet since the criteria has been increased because the AQB now says its old criteria was deficient, would not the alleged "public's right to know" be better served by labeling such a licensed appraiser as non-compliant?
11. Indeed, if the ASC is going to label appraisers, should it not say that every licensed or certified appraiser classified before 2002 is AQB "criteria-deficient?"

PROPERTY RIGHTS ISSUES

12. If the Subcommittee's labeling proposal impacts adversely the economic opportunities of duly licensed appraisers in some states, did the Subcommittee members consider that they may be subjecting themselves (and state regulators who participate in the labeling proposal) individually and collectively to potential financial damages since they have no express legal authority to label appraisers who have met state licensing requirements?
13. If state regulators were sued by aggrieved licensed appraisers that they label at the Subcommittee's directive, will the Subcommittee pay the regulators' attorneys fees and any judgments awarded?
14. Since some licensed appraisers may view the labeling proposal as removing or restricting a lawfully given property right, states who choose to label such licensed appraisers may be required by their state's statutes to provide the opportunity for formal hearings. Will the Subcommittee pay the costs of those hearings?

Aug-09-02 09:25am From-GA REAL ESTATE COMM

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The Board urges the Subcommittee to rescind this labeling proposal now.

For the Board

A handwritten signature in black ink, appearing to read 'C Clark', written over a light gray background.

Charles Clark
Real Estate Commissioner

cc: Association of Appraiser Regulatory Officials
General Accounting Office