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Appraisal Subcommittee

Federal Financial Institutions Examination Council

July 22, 1999

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 a certain fee collection practice of the State of Georgia on behalf of the ASC is consistent with the provisions of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, (“Title XI”), 12 U.S.C. 3310 and 1102-1123. You previously addressed a similar issue in your November 3, 1998 “Decision on the Matter of Appraisal Subcommittee of the Federal Financial Institutions Examination Council [ASC]-Treatment of Multiple-Year Registry Fees,” File B-279866.2 (“Decision”). That Decision interpreted provisions of Title XI regarding certain fee collection practices of the State of California.

Introduction and Background

The ASC was created on August 9, 1989, by Title XI. A copy of Title XI is attached for your convenience. 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.

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 subsequently amended Statement 8 on January 13, 1999, to conform to the Decision.

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.

* * *

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. [In most respects, Georgia's systems meet these requirements.]

* * *

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. If a State has not transmitted an appraiser's annual fee to the ASC, that individual is not recorded in the Registry and 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 may choose to remit to the ASC the total amount of the multiple year National Registry fees. The ASC can only record individuals on the National Registry for the number of years paid.³ If an appraiser, for any reason, becomes uncertified or unlicensed, the appraiser is entitled to a refund consisting of any remaining full-year portions of the appraiser's multiple year fees. When

³ The Comptroller General of the United States, in Decision B-279866.2 (November 3, 1998), prohibited the ASC from identifying appraisers on the National Registry as eligible to perform appraisals in connection with federally related transactions for years for which a State has collected fees but has not transmitted them to the ASC. [Georgia transmits all Registry fees that it collects in a prompt manner. It does not collect multiple year payments and retain them for payment to the ASC in future years. The question regarding Georgia's process is whether it collects the correct fees.]

the ASC receives proper documentation of this loss in status from a State, the ASC will transmit those fees promptly to the State for refund to the appraiser. [Paragraph amended January 13, 1999.]

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.

* * *

The ASC will consider an appraiser inactive if his or her certificate or license renewal fee is not received within 45 days of the invoice date. When in an inactive status, an appraiser is not authorized to perform appraisals in connection with federally related transactions, and the appraiser's listing in the National Registry will be removed. The ASC will change an appraiser from inactive to active status and reinstate his or her listing on the Registry only when it receives the renewal fee and appropriate renewal information from the State agency.

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. [Georgia has always submitted its data in accordance with these requirements.]

* * *

Statement of Disagreement

In a March 13, 1998 letter to the ASC, the Georgia Real Estate Appraisers Board ("GREAB") stated that it uses the following formula to determine initial licensing/certification fees:

Whenever an individual applicant activates an original appraiser classification, that applicant shall pay an activation fee which will cover

all fees due the Board until the last day of the month of the applicant's month of birth in the calendar year following the calendar year in which the applicant first becomes classified.

That formula means that the initial licensing period for the appraiser may be as short as one month or as long as 23 months. Consider these examples:

1. An appraiser's [sic] whose birthday is in January applies for a classification in December of 1998. His initial fee (Georgia's fee and the [National] Registry fee) covers the period only from the date of issuance in December until January 31 of 1999. In January of 1999 he will be required to pay a renewal fee and another [National] Registry fee.
2. An individual whose birth month is December applies for a classification in January of 1998. His initial fee (Georgia's fee and the [National] Registry fee) covers the period of January 1998 until December of 1999 at which time he will pay a renewal fee and another [National] Registry fee.

In the first example less than two months will separate the payment of the fees and in the second example 23 months will separate the payment of the fees. However, in both these instances a \$25.00 fee will be collected from each applicant every *calendar* year. [Emphasis added.] Thus, we [Georgia] do not believe that Georgia's system results in any loss of revenue to the [National] Registry.

GREAB's letter resulted from a discussion between ASC and GREAB staff that occurred at an industry conference during the Spring of 1998. During that discussion, we learned of GREAB's policy as stated above and voiced our opinion that the policy was inconsistent with Title XI and ASC Policy Statement 8. In its letter, GREAB asked that the ASC reconsider Policy 8 as it applied to GREAB's policy.

At its April 1998 meeting, the ASC discussed the Georgia situation and, on April 9, 1998, responded to GREAB's letter. In its April 9, 1998 letter, the ASC informed GREAB:

Georgia's licensing and certification program is structured such that an initial license may be issued for a period ranging from one to 23 months, depending on the appraiser's birthday. The ASC's interpretation of Title XI, as expressed in ASC Policy Statement 8, provides that a National Registry fee is due for each year or portion thereof. Therefore, an initial licensing period of 13-24 months requires a two-year, \$50, Registry fee.

* * *

Policy Statement 8 is not based on revenue streams or calendar years, but Title XI's specific wording. We have interpreted "annual" in Title XI to mean that Registry fees are based on annual, 365-day periods, not calendar years. States should seek to provide each appraiser with a full

year for each \$25 Registry fee, even for the initial licensing period. This way, each appraiser receives the same time value (one year) for his or her Registry fee. If the State chooses, for administrative or other reasons, to structure its licensing program such that appraisers are licensed for partial years instead of full years, that is within the State's authority. However, in such cases, it is incumbent upon the State to collect Registry fees for each full and/or partial year of the licensing period.

In summary, . . . the ASC believes that the proper interpretation of Title XI does not support assessing Registry fees on such a basis. Accordingly, Georgia needs to modify its Registry fee policies to conform to Title XI, as interpreted by ASC Policy Statement 8.

In a June 1, 1998 letter, GREAB asked the ASC to reconsider its decision. At its July 8, 1998 meeting, the ASC revisited its prior determination and saw no reason to change it. In a July 18, 1998 letter to GREAB, the ASC essentially restated its prior position, noting that:

Federal law clearly authorizes [the ASC] to implement, administer and enforce Title XI, including its National Registry provisions. In that regard, the ASC has the inherent authority to interpret undefined statutory language in a reasonable manner to carry out Title XI's purposes. The ASC has exercised that authority by adopting ASC Policy Statement 8 and interpreting "annual" in Title XI to mean that Registry fees are based on annual, 365-day periods, not calendar years.

GREAB subsequently requested a personal appearance of its representatives before the ASC at our September 1998 meeting. That request was granted, and GREAB presented its views and opinions on this issue to the ASC at our September 9, 1998 meeting. Attached is a copy of GREAB's presentation. The ASC stated that it would consider GREAB's position at a future ASC meeting and that, until reaching a final decision, the ASC would consider GREAB's current system acceptable.

On November 3, 1998, you issued your Decision, which we received on November 19, 1998. At its January 13, 1999 meeting, the ASC again considered Georgia's position, in light of that Decision. In a January 15, 1999 letter to GREAB, the ASC stated:

The Comptroller General decided that, based on the wording and legislative history of Title XI . . . , the ASC is not authorized to identify appraisers on the National Registry as eligible to perform appraisals in connection with federally related transactions for years for which a State has collected fees, but has not transmitted them to the ASC. In short, the ASC cannot identify an appraiser on the National Registry for a period that exceeds the National Registry fees remitted to the ASC by the State.

Because of the Decision, the ASC no longer can consider your current system acceptable. As discussed in our previous communications, that system results in initial licensing/certification periods ranging from one month to 23 months. The Decision prohibits the ASC from listing appraisers on the National Registry for more than 12 months (plus an administrative grace period) for a single \$25 annual National Registry

fee. Accordingly, Georgia needs to modify its National Registry policies to conform to Title XI, as interpreted by the Comptroller General.

We recognize that these changes may take some time. Please provide us with an estimated implementation schedule as soon as possible. Please contact us if we can assist you in conforming to this Decision.

On February 10, 1999, GREAB sent us a letter disagreeing with our position. In fact, Georgia reviewed a draft of this letter, and, in a June 4th letter, requested that we include the following paragraph:

GREAB believes that Title XI intends that the ASC must receive appropriate funding from properly classified appraisers. Currently, that amount is \$25.00 per year or portion of a year of classification. While the ASC's definition of 'annual' may be reasonable in many circumstances, it is unduly restrictive. The GREAB does not believe that Title XI authorizes the ASC to define 'annual' as a thirteen-month period if that definition precludes other licensing periods that produce substantially the same income to the ASC. The GREAB believes that its initial licensing system produces the same net income to the ASC. The ASC has produced no evidence to the contrary. Thus, the ASC should accept Georgia's initial licensing period because it produces at least the same income for the ASC and because the ASC's failure to do so will result in an unnecessary expense to the GREAB and ultimately its classified appraisers.

In our April 21, 1999 letter to Georgia, we detailed examples in which GREAB would not collect appropriate Registry fees. In fact, in any situation in which the initial licensing cycle exceeds one year (plus an administrative grace period not to exceed 30 days), GREAB will collect less Registry fees than Title XI requires. GREAB then sent us a letter on May 4, 1999. In short, we continue to disagree. During this month, we agreed to submit the matter to you for your determination and to abide by your decision.

We have attached copies of all correspondence to this letter. Please contact Marc Weinberg, the ASC's General Counsel, at 202-872-7520 or by Internet at marcw1@asc.gov, if you have further questions.

Sincerely,

Herbert S. Yolles
Chairman

Attachments