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CHARLES CLARK  
Real Estate Commissioner

November 30, 2001

BY E-MAIL

The Appraisal Subcommittee  
Suite 310  
2000 K street, NW  
Washington, DC 20006

Dear Subcommittee Members

At the October, 2001, meeting of the Association of Appraiser Regulatory Officials, Ben Henson made a presentation on recent and proposed activities of the Subcommittee (ASC). He indicated that the ASC staff planned to recommend to you increased scrutiny of state regulatory agencies through such possible measures as more frequent site inspections. The tenor of his remarks suggested that the need for such steps arose from regulatory agencies failing to meet their responsibilities under Title XI and thus preventing the achievement of the goals the ASC believes that Title XI demands.

We ask that as you consider your staff's proposals in this area you bear in mind three points. First, the purpose of governmental regulation of a trade or profession is (a) to establish minimum competency levels for practice (not to assure the highest quality performance) and (2) to remove from practice those who do not meet minimum competency levels in serving the public. Too often your agency appears to have assumed that the purpose of regulation through Title XI is to assure lenders perfect appraisals - perhaps a laudable goal, but an unrealistic and inappropriate one.

Second, to increase site visits to states that are in substantial compliance with Title XI would be a waste of your personnel's time and that of the state regulatory agencies. If a state does not perform to your expectations, you should invoke your disciplinary powers to address the specific problems in the specific state. If you do institute such disciplinary actions, we believe that you are likely to find that at least one practical factor in any state's alleged "non-compliance" with you agency's desires is the constantly shifting interpretations, standards, and criteria promulgated by the Appraisal Standards Board and the Appraiser Qualifications Board and uncritically endorsed and forced on states by your agency.

Third, your agency has been excessively diligent in demanding that states adhere to its interpretations of the provisions of Title XI and its "statements." From our experience with your agency's demands we know that it will brook absolutely no deviation from what it decides is the way a state must comply with federal requirements - even if the state's approach yields the same result and even if your agency's approach costs appraisers more money. (For examples, see such rulings as your agency's attitudes on the collection of fees and when appraisers must take continuing education.)

While perhaps your agency can make an argument that the scope and limitations of federal law must be strictly adhered to by everyone, it should not attempt that argument unless it is willing to apply that standard to itself and to every other entity with which Title XI authorizes it to interact. Clearly, your agency has failed to do so in its dealings with the Appraisal Foundation. Consider but one example. Your agency has allowed the Appraisal Qualifications Board to use taxpayer money:

1. to write criteria for appraiser classifications that Title XI expressly prevents it from setting;
2. to write criteria for continuing competency of appraisers, when Title XI grants it no express authority to do so;
3. to approve and mandate examinations, when Title XI grants it no express authority to do so;
4. to mandate instructor training, when Title XI grants it no express authority to do so; and
5. to implement mandatory programs or approvals (e.g., standards instructor training and examination approvals), which may constitute violations of The Sherman Antitrust Act.

Your agency compounds the problem demanding that states adhere to those illegally established criteria. It further compounds the problem by participating in hiding how the Foundation and its Boards expend the hundreds of thousands of dollars in individual grants (totaling approximately \$5,000,000.00 according to your 2000 Annual Report) that your agency doles out to them. The Foundation Boards have denied our requests for information on how much federal money they use to promulgate standards or criteria. Your agency's Annual Report has never provided any detailed accounting of those expenditures (indeed, not even in such standard broad categories as your agency details its own expenditures). Is there something to hide here? How could what they have done possibly cost \$5,000,000.00? Should not your agency make a condition of its grants to the Foundation's that they disclose

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how much of such funding they use each time they promulgate interpretations, standards, or criteria? Should not your agency detail and publicize annually how they are using the taxpayer money that you give them?

While some states may need closer scrutiny by your agency, we believe your agency would do far more to improve appraisal regulation if it uses its financial and legal powers to reign in the Foundation and its Boards.

For the Board

Charles Clark

Real Estate Commissioner

cc: Ben Henson Mel Black