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Appraisal Subcommittee

Federal Financial Institutions Examination Council

April 8, 2002

Charles Clark, Real Estate Commissioner
Georgia Real Estate Appraisers Board
Suite 1000, International Plaza
229 Peachtree Street, N.E.
Atlanta, GA 30303-1605

Dear Mr. Clark:

In your February 20, 2002 letter, you reiterated many previously stated positions; positions we have addressed in earlier correspondence. Your letter, however, at pages three and four, contains four specific questions. Our responses to these questions follow.

- **Why did your agency's legal counsel not send us information on that [Appraisal Foundation] funding in June of 2000 when I contacted him about the AQB's refusal to supply that financial information to us? (Like you, he said the information was available through the "Freedom of Information Act" but did not send us any information.)**

Documents in the ASC's possession or control may be obtained by members of the public under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, and ASC regulations at 12 CFR § 1102.300, *et seq.* FOIA and our regulations are in the public domain and are available not only in libraries, but via the Internet.

Other than classes of documents that we have placed in our Internet-based FOIA Reading Room as required by FOIA and our regulations, we do not release documents to the public without first receiving a written FOIA request. Our General Counsel recalls that he spoke with you regarding obtaining ASC records relating to the Appraisal Foundation. As required by Federal law, he requested that you provide us a written FOIA request describing the records sought. Reasonably describing the records sought is important because, in the case of the Appraisal Foundation grant, we have thousands of pages of documents supporting the Foundation's grant proposals, reporting, and reimbursement requests. We have not received a written FOIA request from you, but, as we have stated, we would welcome such a request. However, you should be aware that there is an expense charged for document search, review, and duplication, and the costs could become quite expensive, given the volume of documents involved. To reduce duplication costs, you may request to inspect documents in our Washington DC office.

- **Why did you only provide us in your letter a summary of your agency's procedures instead of (a) substantive information on specific programs and projects of the Appraisal Foundation and its Boards that the ASC has funded, (b) their specific proposals that the ASC has refused to fund, (c) any projects that the ASC has requested they undertake with taxpayer funding, and (d) their specific activities from which the ASC has had to withdraw funding?**

Much of the information is contained in documents in the ASC's possession or control. As we discussed above, to obtain the relevant documents, you must to file a written FOIA request with us. Also, as we stated in prior correspondence, the National Registry fees that we collect and our allocation of those funds through grants to the Appraisal Foundation do not involve "taxpayer funds."

- **Why does the ASC not publicize the requests that the Foundation and its Boards make of it and their accounting to your agency for expenditures of taxpayer funds (over \$5,000,000.00 to date) so that the public may evaluate and comment on the requests and accounting and on your agency's responses and oversight? Is any detailed financial accounting required of the Foundation and have they produced it?**

The ASC publishes the minutes of its monthly meetings on the Internet at www.asc.gov. All Foundation grant and reimbursement requests are presented, analyzed, and approved or disapproved at those meetings, and the minutes reflect those actions. U.S. Government agencies that grant funds to nonprofit entities and State governments must comply with Office of Management and Budget Circular No. A-133, *Audits of States, Local Governments, and Non-Profit Organizations*. These agencies are not required to provide the public with an opportunity to evaluate or comment on these grant-related agency determinations or on oversight matters involving grantees. They must, however, make appropriate documents available to the public under FOIA. As grantor to the Appraisal Foundation, the ASC complies with Circular No. A-133, and our compliance is tested annually by our outside auditors. Each year, we publish our audited financial statements, together with the auditor's *Independent Auditor's Report*, and *Independent Auditor's Report Required by Government Auditing Standards* in our Annual Report to Congress. Also, to conform to Circular A-133, our auditors perform an annual review of the Foundation to ensure that grant funds are used lawfully and appropriately. You may view and download Circular A-133 at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>.

- **Why has the ASC closed to the public its deliberations on policy issues such as funding the Foundation's activities and other non-investigative or non-personnel matters? For example, when our Board had me to present its views to your agency on our collection of initial National Registry fees for your agency, I was not allowed in your agency's meeting before or after I made the presentation nor when the Subcommittee members discussed their response. (The Board does not question the appropriateness of your agency's closing its meetings to discuss investigative or personnel matters.)**

The ASC is not subject to the "Government in the Sunshine Act," 5 U.S.C. 552b, and is not required to have public meetings.

Finally, we note that there are two initiatives that should be of interest to you. First, you may be aware that on March 12, 2002, Senators Sarbanes and Miller asked the General Accounting Office ("GAO") to prepare a study assessing both the Federal and State appraiser regulatory systems as set forth in Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, ("Title XI"). We welcome this very broad assessment of Title XI's appraiser regulatory program and anticipate that GAO will answer many of your questions when its report is issued. Second, we expect that the Federal Financial Institutions Examination Council's Legal Advisory Group soon will be issuing its legal opinion regarding: (1) the scope of authority of the Appraiser Qualifications Board ("AQB") to adopt education-related standards for certified real estate appraisers; (2) the authority of the ASC to monitor the AQB; and (3) the

ASC's authority to oversee state appraiser regulatory agency implementation of those AQB standards pursuant to Title XI. We will send you a copy of that opinion when it is published.

Please contact us if you have further questions.

Sincerely,

Jesse G. Snyder
Chairman