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# Appraisal Subcommittee

*Federal Financial Institutions Examination Council*

September 11, 2002

George R. Harrison, Ph.D.  
The Columbia Institute  
8546 Broadway, Suite 237  
San Antonio, TX 78217-6340

Dear Dr. Harrison:

Chairman Powell asked that I respond to your August 13<sup>th</sup> letters to him in his capacity as Chair of the Federal Financial Institutions Examination Council (“FFIEC”). You make a number of assertions and conclude that the Executive Director and some appointed members of the Appraisal Subcommittee (“ASC”) should be replaced. In summary, you stated that the ASC has been discourteous, deceptive, and slow in responding to legitimate public concerns.

As the recently appointed Chairman of the ASC, I am, of course, concerned that such perceptions exist. However, as a general observation, it seems that you may misunderstand the extent of the ACS’s oversight role regarding the Appraiser Qualifications Board (“AQB”). Broad authority to establish appraiser certification criteria is vested in the AQB, which is a private entity. Although the ASC has an oversight role, that role is limited to monitoring whether the AQB’s proposals are reasonable, are not arbitrary or capricious, and are otherwise consistent with the law. As you are aware, the Legal Advisory Group of the FFIEC (“LAG”) has advised us that Title XI does not provide the ASC with the authority to direct or overrule the specific operations or structure of the AQB. Whether the individual members of the ASC may agree or disagree with the AQB’s decisions regarding certification criteria or approved training programs, those decisions are fully within the AQB’s authority to render. Any complaints about those decisions should be directed to the AQB.

Having said that, I will address your individual allegations in the order they were presented in your August 13<sup>th</sup> letters.

- 1) The ASC was both discourteous and irresponsibly slow in its delay to either require the AQB [Appraiser Qualifications Board] to seek a legal opinion of its instructor certification program or to seek such an opinion itself.

We assume that you are referring to the ASC’s December 20, 2001 request to the LAG for a legal opinion. While the ASC did not request an opinion specific to the AQB’s USPAP instructor certification program, the ASC requested an opinion regarding the AQB’s legal authority to adopt minimum education requirements for certified real estate appraisers, including those relating to continuing education and distance education.

The ASC’s request to the LAG followed several months of correspondence exchanges with Lee & Grant Company (“Lee & Grant”) regarding the AQB’s authority relative to continuing education and distance education issues. Whenever possible, the ASC attempts to resolve issues on a non-legal basis. After an extended period of correspondence with Lee & Grant, it became apparent that such resolution would not be possible. Accordingly, the ASC requested a legal opinion to address the issues that were the focus of Lee & Grant’s contentions. You should note

that, at that time, no one had requested that the ASC obtain a legal opinion. The ASC determined, only after other dispute resolution efforts had failed, to request such an opinion.

2) The ASC was discourteous and deceptive in its request for an opinion to the LAG by structuring the request so narrowly as to avoid the issues being questioned, thereby misleading the LAG.

As noted above and specified in the ASC's December 20, 2001 request to the LAG, the ASC was attempting to resolve issues that had been the subject of correspondence with Lee & Grant. As discussed above, Lee & Grant's contentions focused on the AQB's authority relative to continuing education and distance education. The correspondence that prompted the ASC's request for a legal opinion did not address the AQB's certified USPAP instructor program. The ASC clearly explained the background of the issues in question, the reason for its request, and its position regarding the issues. Additionally, the ASC attached to its request to the LAG copies of all correspondence between the ASC and Lee & Grant.

3) The LAG was irresponsibly slow in providing a response to the request.

Two factors primarily affected the timing of the LAG's response: (a) the legal issues addressed in the ASC's request were substantive, requiring extensive research and evaluation; and (b) the LAG's structure and operating procedures. The General Counsel of each of the five Federal financial institution regulatory agencies sits on the LAG. When the LAG receives a request for a legal opinion, the request is assigned to the legal staff of one of the five agencies. That agency's legal staff performs the legal research and analysis regarding the issue and drafts a preliminary legal position. That preliminary legal position then is forwarded to the legal offices of the other four agencies for review and comment. Often, comments are solicited more than once during the drafting process. Once comments have been received from the other four agencies, the originating agency's legal staff incorporates any needed changes into the final document and prepares it for signature. Before signature by the Chairman of the LAG, the final draft must be approved by each agency's General Counsel. By its nature, this procedure is time consuming. Also, any LAG work is additional to the normal agency work flow of the legal offices of five Federal agencies.

4) The ASC was discourteous and disrespectful in providing the wide dissemination of the opinion proclaiming it to have some substance.

The ASC provided copies of the LAG's legal opinion only to those persons or organizations that had requested a copy and to the States. The ASC provided copies to the States because the issues addressed in the opinion had been discussed at several previous Association of Appraiser Regulatory Officials ("AARO") conferences.

5) The ASC Executive Director was deceptive in his December 6, 2001 meeting with representatives of the Subcommittee on Housing and Community Opportunity, and in his March 20<sup>th</sup>, 2002 letter to Columbia Institute.

On December 5, 2001, the Chairman at that time, Executive Director, and General Counsel of the ASC met with Mr. Paul Kangas and other staff members of the United States House of Representatives Committee on Financial Services. The meeting was held at the request of the Committee on Financial Services. The ASC Executive Director responded to questions posed by

the Committee representatives and was truthful, responsive, and respectful at all times, as were the ASC Chairman and General Counsel.

The ASC's March 20<sup>th</sup> letter responded to your March 7<sup>th</sup> letter. In your letter, you asked for a copy of ASC General Counsel Marc Weinberg's legal opinion addressing AQB authority regarding its certified USPAP instructor proposal and its requirement for the 15-hour Uniform USPAP course, or its equivalent. You asked that Mr. Weinberg prepare such a legal opinion, if he had not already done so. We responded that Mr. Weinberg had not prepared a legal opinion addressing this issue. We advised you that the ASC had asked the LAG to prepare a legal opinion addressing the scope of authority of the AQB to adopt education-related standards for certified real estate appraisers and two other issues. We thought that this opinion would be responsive to your request and we advised you that we would provide you a copy. After receiving the LAG's legal opinion, we reviewed the opinion and concluded that the issues raised in your March 7<sup>th</sup> letter were adequately covered in the opinion. As promised in our March 20<sup>th</sup> letter, we forwarded a copy of the LAG opinion to you on June 19<sup>th</sup>.

The ASC General Counsel believes that the language of the LAG opinion applies to the AQB's authority to adopt its requirements pertaining to the use of certified USPAP instructors and the AQB's 15-hour National USPAP Course or its equivalent. The LAG's legal opinion states, "the terms of Title XI clearly authorize the AQB to establish minimum criteria for state certification of real estate appraisers" and that "[b]y not limiting the scope of the criteria, the statute appears to vest the AQB with broad discretion in determining what minimum criteria are appropriate for appraiser certification." The LAG's opinion further notes: "In light of the AQB's broad authority to establish minimum appraiser certification criteria, discussed above, the ASC generally monitors whether the AQB's proposals are reasonable, not arbitrary or capricious, and otherwise consistent with law.... The ASC's approach to overseeing the AQB appears to be consistent with the Title XI provisions. Title XI does not authorize the ASC to establish the minimum criteria for state certification of appraisers and, therefore, it should not substitute its judgment for that of the AQB in establishing the criteria. Although Title XI does mandate that the ASC 'monitor and review the practices, procedures, activities, and organizational structure of the Appraisal Foundation' and the AQB, Congress did not provide the ASC with the authority or the power to direct or overrule the operations or structure of these private entities."

The ASC believes that a literal reading of the LAG's opinion eliminates any need for an ASC legal opinion regarding the AQB's certified USPAP instructor program and 15-hour National USPAP Course, or its equivalent. Both initiatives evolved from, and are directed toward, the education provisions of the AQB's minimum appraiser certification criteria. The ASC continues to believe that both initiatives are reasonable, not arbitrary or capricious, and otherwise consistent with law. It was the ASC's intention that furnishing a copy of the LAG's opinion to you addressed your March 7<sup>th</sup> request. Because the ASC has not heard from you since furnishing the LAG's legal opinion, we were not aware that you found that response to be unsatisfactory.

6) Specific actions taken and statements made by Mr. Tom Watson, an appointed member of the ASC, were inappropriate, unfounded and inflammatory.

Your second letter was referred to the Office of the Comptroller of the Currency.

It is clear that you are unhappy with the decisions rendered by the AQB and subsequent rulings by the ASC. However, after reviewing the facts of the matters in question, I can find no evidence or indication that the ASC Chairman at that time or the Executive Director has been

discourteous or deceptive, or acted in any way inappropriately. I hope that this letter has fully addressed your specific concerns.

Sincerely,

Jesse G. Snyder,  
Chairman

cc: Senator Paul Sarbanes  
The Honorable Marge Roukema  
The Honorable Mac Collins  
The Honorable Charles A. Gonzalez  
The Honorable Cynthia McKinney  
Mr. Paul Kangas, House Committee on Financial Services  
Mr. Mel Black, President, AARO  
Mr. William F. Kroener, III, FFIEC Legal Advisory Group