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Appraisal Subcommittee

Federal Financial Institutions Examination Council

November 24, 1998

William M. Schroeder, Executive Secretary
Iowa Real Estate Appraiser Examining Board
Professional Licensing and Regulation Division
1918 S.E. Hulsizer
Ankeny, Iowa 50021-3941

Dear Mr. Schroeder:

Thank you for your October 26, 1998 letter to the Appraisal Subcommittee ("ASC") regarding the confidential and privileged nature of "all complaint files, investigation files, other investigation reports, and other investigative information" in the Iowa Real Estate Appraiser Examining Board's ("Board") possession under Iowa Code § 272C.6(4). You believe that this section will prohibit you from providing us access to these types of documents when we review your appraiser regulatory program next year. You "are seeking information on any federal law or rules that would override the Iowa law and allow the ASC to review [your] complaint files."

Under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended ("Title XI"), the ASC is required 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." 12 U.S.C. 3332(a)(1). More specifically, the ASC must review each State appraiser regulatory agency ("State agency") to determine "whether [its] policies, practices, and procedures are consistent with [Title XI]." 12 U.S.C. 3347(a). In that regard, the ASC must determine whether each State agency: (1) recognizes and enforces the standards, requirements and procedures prescribed by Title XI; (2) whether the State agency is granted authority by the State adequate to carry out its Title XI-related functions; and (3) whether decisions concerning appraisal standards, appraiser qualifications, and supervision of appraiser practices are made in a manner consistent with Title XI. *See* 12 U.S.C. 3347(b).

To perform its statutory responsibilities under Federal law, the ASC must have access to all open and closed complaint files pertaining to State certified or licensed real estate appraisers. Free access to those files is critical to our ability to determine whether a State agency is recognizing and enforcing the Uniform Standards of Professional Appraisal Practice and making appropriate supervisory decisions regarding the qualifications and activities of State certified or licensed appraisers. You should be aware that State complaint files and related information viewed or obtained by the ASC during a field review generally are protected from disclosure under the Freedom of Information Act and the Privacy Act of 1974.

We note that your statute allows the disclosure of complaint files "to appropriate licensing authorities within [Iowa], the appropriate licensing authority in another state, the District of Columbia, or a territory or country in which the licensee is licensed or has applied for a license." Moreover, if the information indicates criminal activity, you can release that information to "the proper law enforcement agency." Therefore, the statute allows the State to release the

information when that information furthers lawful governmental interests. As discussed above, the ASC requires access to that information to perform its lawful statutory duties. Finally, we note that the ASC represents the United States, and any of your licensed or certified appraisers are “licensed” within the United States. Therefore, you may choose to interpret your statutory provision to allow ASC access to complaint files. If you determine that such an interpretation cannot be adopted, then Iowa must take steps as soon as possible to cure this conflict between its law and Title XI.

Please contact us if you have any questions.

Sincerely,

Ben Henson
Executive Director