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# Appraisal Subcommittee

*Federal Financial Institutions Examination Council*

July 19, 2002

Sam. E. Blackburn, Executive Director  
Kentucky Real Estate Appraisers Board  
2480 Fortune Drive, Suite 120  
Lexington, KY 40509

Dear Mr. Blackburn:

This letter responds to your June 27, 2002 letter in which you made comments regarding the June 11, 2002 legal opinion issued by the Legal Advisory Group of the Federal Financial Institutions Examination Council (“LAG”).

- You stated that the questions asked of LAG by the Appraisal Subcommittee (“ASC”) were carefully worded to solicit a favorable response for the ASC and Appraiser Qualifications Board (“AQB”). You further stated that the questions were shallow and generic, missed the point, and left important questions unanswered.

As specifically stated in the second paragraph of our December 20, 2001 letter to LAG, the purpose of our request was to address allegations made by Lee & Grant Company in a series of letters to the ASC, the member agencies of the Federal Financial Institutions Examination Council, the Appraisal Foundation, and various members of the United States Senate and House of Representatives. In the next paragraph of our letter, we summarized our understanding of the five major contentions contained in various Lee & Grant correspondence. As you know, most of Lee & Grant’s assertions revolved around the AQB’s continuing education criteria, including distance education and the ASC’s authority to monitor AQB’s actions and State implementation of the Criteria. On the second page of our letter to LAG, we requested a legal opinion on three very specific issues, the issues that we believed most appropriately addressed Lee & Grant’s concerns.

- You suggested that we pose two questions to LAG, both addressing whether Title XI gives the AQB the authority to establish a monopoly as contemplated in the Sherman Anti-Trust Act.

Issues involving the Sherman Anti-Trust Act and monopolistic activities would be better addressed by an agency of appropriate jurisdiction (*e.g.*, the Federal Trade Commission or the Justice Department) or the Federal judicial system.

- You questioned whether the process used in writing and validating the examination questions met any recognized industry standards and whether a competent psychometrician or court would find the validation process credible.

The AQB used the services of a psychometrician in the examination analysis and validation process. It is our understanding that the psychometrician providing these services is well credentialed, well respected in his field, and experienced not only in examination issues but has

familiarity with appraisal issues. We have no reason to doubt the validity of the process or his contribution to the process.

- You questioned why the ASC does not fund the certified instructor initiative to remove the Appraisal Foundation's "profit aspect" and contended that the Foundation "is attempting to generate funds off the backs of our nation's appraisers and education providers with the assistance and concurrence of the ASC."

There is no indication that Congress contemplated that the Foundation would meet its Title XI responsibilities at zero costs, or that it anticipated that the ASC's grant authority would be adequate to cover all of the Foundation's Title XI-related costs. We believe it reasonable for the Foundation to charge fees for its services, just as the States do when certifying and licensing appraisers and when approving educational courses. We closely monitor the Foundation's activities, including fees established for Title XI-related services. Our primary consideration is that the fees are reasonable and not established in an arbitrary and capricious manner. Based on the financial information that we have reviewed thus far, the certified instructor initiative is not a profit generator for the Foundation. In fact, to date, the Foundation has not generated enough related fees to cover associated costs. And, based on our observations of Foundation activities and discussions with Foundation personnel, we do not believe that the Foundation's purpose in initiating the instructor certification program was profit motivated.

Please contact us if you have further questions.

Sincerely,

Ben Henson  
Executive Director