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Appraisal Subcommittee

Federal Financial Institutions Examination Council

December 20, 2001

William F. Kroener III, Chairman
Legal Advisory Group
c/o Federal Deposit Insurance Corporation
550 Seventeenth Street, NW, Room 3028
Washington, DC 20429

Dear Mr. Kroener:

As discussed below, the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (“ASC”) requests a legal opinion from the Legal Advisory Group (“LAG”) regarding: (1) the scope of the Appraisal Foundation’s Appraiser Qualifications Board¹ (“AQB”) authority 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 (“State agency”) implementation of those AQB standards, pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (“Title XI”). A copy of Title XI is enclosed.

We are requesting this opinion because the AQB’s authority to adopt such standards and the ASC’s and State agencies’ duty to enforce those standards under Title XI have been challenged by Lee & Grant Company (“Lee & Grant”), an appraisal education provider, through its Director of Education, Stephen G. Patten. We note that, of the 56 Title XI jurisdictions and hundreds of education providers, only Lee & Grant and a single State agency (Georgia) have asserted that the AQB’s actions are not statutorily authorized. Lee and Grant is located in Atlanta, GA.

Lee & Grant and Its Contentions - Summary

Through a series of letters to the ASC, the FFIEC, the FFIEC member agencies, the Appraisal Foundation, and others, Lee & Grant contends that:

- The AQB does not have legal authority to establish continuing education criteria for appraisers;
- The AQB does not have legal authority to approve courses for distance education (through its Course Approval Program);
- The AQB does not have legal authority to require that all education providers use the Foundation’s National USPAP Course or its equivalent (equivalency to be determined by the AQB);
- The ASC is not adequately monitoring the Foundation; and
- The ASC should not require States to comply with the AQB Criteria regarding distance education.

¹ The Appraisal Foundation is a private, not-for-profit Illinois corporation recognized by Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, as the source of appraisal standards and appraiser qualifications. Section 1121(9) of Title XI, 12 U.S.C. 3350(9), specifically refers to the Foundation. The AQB, an independent board within the Foundation, sets the minimum education, experience, and testing requirements for certified real estate appraisers. *See infra* note 3 and the text accompanying that note.

Request for Legal Opinion

Lee & Grant remains adamant in its opposition to the AQB's educational initiatives and continues questioning the AQB's legal authority to establish those initiatives. We continue to believe that Title XI clearly authorizes the AQB to establish minimum educational requirements for certified real estate appraisers, including those relating to distance education. We have enclosed a "Background" document providing useful information and copies of all relevant correspondence.

We request a legal opinion from the LAG regarding the following issues:

- (1) Does Title XI authorize the AQB to adopt minimum education requirements for certified real estate appraisers, including those relating to continuing education and distance education?
- (2) Is the ASC's interpretation of its duties to monitor and review AQB activities appropriate and consistent with Title XI and other applicable law?
- (3) Was the ASC acting improperly or in any manner inconsistent with Title XI or other law when it instructed States to rescind their approvals of continuing education courses for certified real property appraisers that did not conform to AQB Criteria?

If you have any questions, please contact ASC Executive Director Ben Henson or ASC General Counsel Marc Weinberg.

Sincerely,

Thomas E. Watson, Jr.
Chairman

Enclosures