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Appraisal Subcommittee

Federal Financial Institutions Examination Council

November 21, 1999

Marvin T. Deane, J.D.
National Association of Master Appraisers
Lincoln Graduate Center
303 W. Cypress St.
San Antonio, TX 78212

Dear Mr. Deane:

Thank you for your October 19, 1999 letter to us objecting to Oregon's new regulations requiring all education providers to teach The Appraisal Foundation's ("TAF") National Uniform Standards of Professional Appraisal Practice ("USPAP") Course ("Course"). You believe that "there is a movement to have all states create a monopoly for this work which has serious legal considerations." While we understand your objections, for the reasons discussed below, we believe that: (1) the actions of Oregon and TAF are within their respective authorities under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended ("Title XI"); and, (2) the Appraisal Subcommittee's ("ASC") jurisdiction does not extend to allegations of monopoly.

Historically, every educational provider has been able to construct and teach its own USPAP courses in any manner. No way existed to ensure any consistency in approaching course materials or any uniformity in teaching USPAP's substance. As a result, students could come away from State-approved USPAP courses with varying degrees of knowledge concerning USPAP. TAF, through its Appraiser Qualifications Board ("AQB") and Appraiser Standards Board ("ASB"), recognized this problem and, to ensure consistency in USPAP education throughout the United States, created the Course, with your, and other members of the appraisal industry's, assistance. The Course is available to all education providers. The AQB has not made it mandatory, even though we believe that it could have done so within its authority under Title XI.¹

Under § 1118(b) of Title XI, 12 U.S.C. 3347(b), Oregon, at a minimum, must "recognize and enforce the standards, requirements, and procedures prescribed by [Title XI,]" and it must ensure that its "decisions concerning appraisal standards, appraiser qualifications, and supervision of appraiser practices are . . . made in a manner that carries out the purposes of [Title XI]." Because the AQB's Criteria and the ASB's USPAP are "minimums," Oregon, and other States, can adopt additional criteria and supplemental standards. In fact, the ASC has formally recognized this

¹ Section 1116(a) of Title XI, 12 U.S.C. 3345(a), clearly authorizes the AQB to establish mandatory minimum criteria for certification. Among other things, the AQB requires applicants for certification to take a course in "Appraisal Standards and Ethics." The AQB also has established suggested minimum criteria for licensure that are modeled on its certification criteria. In addition, § 1110 of Title XI, 12 U.S.C. 3339, authorizes the ASB to promulgate "generally accepted appraisal standards." And, these standards must be "uniform," § 1101 of Title XI, 12 U.S.C. 3331.

authority in *ASC Policy Statement 2, Appraiser Qualifications* (September 22, 1997). There, the ASC stated:

Any State . . . may impose additional appraiser qualification requirements if [it] consider[s] such qualifications necessary to carry out [its] responsibilities under Federal law and regulations. Additional imposed State requirements, however, must not unduly restrict the ability of persons to become State certified or licensed appraisers. Moreover, those requirements must not reduce appraiser certification qualifications below those established by the AQB or unduly burden temporary practice. They also should not hamper the creation of State reciprocity agreements.

In our view, by requiring education providers to use the Course, Oregon has simply exercised its authority under Title XI to implement additional criteria. If, however, Oregon's implementation of requiring the Course were to prove to unduly restrict the ability of persons to become State certified or licensed appraisers or unduly burden temporary practice, then the ASC would take appropriate action.

Finally, the ASC is not authorized under Federal law to entertain allegations of monopoly. That authority properly lies with other Federal and State agencies and Federal and State judicial systems.

Please contact us if you have further questions.

Sincerely,

Marc L. Weinberg
General Counsel and Acting Executive Director

cc: Linda Riddell, Administrator, Appraiser Certification and Licensure Board