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Appraisal Subcommittee

Federal Financial Institutions Examination Council

October 31, 2007

The Honorable Paul E. Kanjorski
Chairman
House Financial Services Subcommittee on
Capital Markets, Insurance and Government
Sponsored Enterprises
United States Congress
B-304 Rayburn House Office Building

Dear Chairman Kanjorski:

The Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC) is pleased to respond to your request for comments on H.R. 3837, the Escrow, Appraisal, and Mortgage Servicing Improvement Act. The ASC supports congressional efforts to promote quality appraisals for both residential and commercial real estate transactions. Overall, the ASC notes that many of provisions of the legislation mirror actions the ASC has previously undertaken to promote quality appraisals for federally regulated financial institutions.

As you are aware, the ASC is tasked with monitoring the appraisal reform initiatives mandated by Title XI of Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (Title XI). Since that time, the ASC has worked with the State appraiser regulatory authorities, the Appraisal Foundation and its two boards, and the federal financial institutions regulatory agencies to carry out the purpose of Title XI -- that appraisals utilized in federally related transactions are performed in accordance with uniform standards and by individuals whose competency has been demonstrated and whose conduct is subject to effective supervision.

The ASC offers the following comments on the provisions of the bill:

- **Consumer Protection Provisions:** A provision of the bill adds a mandate to the ASC's mission to protect "consumers from improper appraisal practices and the predations of unlicensed appraisers. Through the framework of Title XI, the ASC strives to ensure that the States appraiser regulatory authorities promote adequate qualification standards for their credentialed appraisers and provide effective supervision of their appraisers. The ASC has no direct mechanism to administer consumer protection. Further, the ASC notes that the FFIEC member agencies and Department of Housing and Urban Development (*i.e.*, the agencies represented on the ASC) have the authority, regulatory and enforcement, with respect to consumer protection.
- **Annual Report of the Appraisal Subcommittee:** The ASC does not object to providing additional detail in its annual report. The ASC annual report is only a summary of its activities for the past year. The issue of transparency of ASC operations was raised by Government Accountability Office (GAO) in its May 2003 report ("GAO Report") on "Opportunities to Enhance Oversight of the Real Estate Appraisal Industry." In response

to the GAO recommendations, the ASC now routinely provides public disclosure of its State review process and findings. The ASC posts its State review letters on its website within 60 days after issuance of the letters, regardless of whether or not a State replies. A State's response letter on the ASC review is posted promptly after the ASC receives the State letter.

- Open Meetings: The ASC agrees that the States' appraiser regulatory authorities, certified and licensed appraisers, and the public, would benefit from having a better understanding of the ASC's activities. The GAO made a similar recommendation in its May 2003 report that the ASC's meetings should be open to the public. In response to the GAO Report and comments at a 2004 congressional hearing, the ASC allows the public to attend its meetings. The instructions for submitting a request to attend a meeting, the meeting agendas, and the meeting minutes are posted on the ASC's website. The ASC's regular monthly meeting is scheduled on the second Thursday of every month. Further, meeting agendas generally are posted to the ASC website one week prior to the monthly meeting with a description of the agenda items for both open and closed portions of the meeting. The ASC believes that it should preserve the right to close certain portions of its meetings, given the sensitive nature of the discussion of the ASC staff reviews of individual States' appraiser regulatory programs.
- Rulemaking Authority: In the absence of rulemaking authority, the ASC has adopted policy statements that provide guidance to the States on complying with Title XI and has issued draft policy statements for public comment prior to adoption. The ASC policy statements are the ASC's formal interpretations of Title XI and provide the States with our recommendations on best practices. While the ASC usually has not published these policies in the Federal Register for public notice and comment, the ASC has solicited comment directly from the States and other affected parties prior to adopting the policy statements. This process has allowed the ASC to develop thoughtful and measured responses to issues that are reflective of all affected parties' positions and concerns. In 1999, GAO issued a decision that "as the entity responsible for administering this legislation [Title XI], the ASC's interpretation of the statute is entitled to great weight and should ordinarily be followed unless there are strong indications that the legislative history or otherwise that its interpretation is arbitrary or inconsistent with the statutory purpose." Therefore, in our experience, a lack of rulemaking authority has not hampered the ASC in carrying out its Title XI responsibilities. H.R. 3837 also recommends that the ASC establish an advisory committee to assist the ASC in its regulatory process. The ASC notes that ASC members and the ASC staff meet regularly with the States and the Association of Appraiser Regulatory Officials (AARO) to keep an open line of communication on concerns and issues of the States. The ASC members and ASC staff also meet regularly with representatives from the Appraisal Foundation and its two boards and other industry representatives to maintain an understanding of appraisal standards and appraiser qualification criteria. The ASC believes that these initiatives serve the same purpose as the H.R. 3837 provision on the establishment of an advisory committee.

- State Agency Reporting Requirement: This provision is currently addressed by an ASC policy statement that requires the States to provide information on their licensed and certified appraisers to the ASC no less frequently than monthly. In the case of the most serious disciplinary actions, such as suspensions and revocations, the ASC strongly encourages States to notify the ASC immediately. Further, if a State's information does not change during the course of a month, a State is required to notify the ASC in writing that there have been no changes. As part of the ASC's on-site review of a State's appraiser regulatory program, the ASC staff checks the State's reporting of appraiser information. Based on our assessment, the States currently provide appraiser information for the national appraiser registry in a timely manner. The ASC requests further clarification on the H.R. 3837 provision regarding the requirement that the States report "claims" to the ASC.
- Registry Fees Modified: The provision of H.R. 3837 to increase the ASC's authority to adjust the registry fee does not appear necessary at this time, given the current responsibilities of the ASC. Over the years as part of its annual budget and planning process, the ASC has considered whether the registry fee should be increased. However, the number of appraisers on the registry has continued to grow, which is also a factor affecting the ASC income. As of September 2007, there were over 120,000 appraisers on the registry. Further, the ASC has over \$7 million in reserves. The ASC would continue to evaluate whether to increase the annual national registry fee in relation to its duties and responsibilities, operating budget, and reserves.
- Grants to the States: The provision of H.R. 3837 to provide grant funds to the States would have a significant impact on ASC operations. If the ASC were to provide funding for the enforcement activities of the 54 State appraiser regulatory authorities, this could be a very substantial financial commitment for the ASC, greater than the level of funding provided by an increase in the national registry contemplated in this legislation. In addition, the ASC would have to develop policies on how the States could use the funds for their enforcement activities and an oversight framework to ensure that the States were using the funds as intended. Under Title XI, the ASC currently is authorized to provide grant funds to the Appraisal Foundation and its two boards for their Title XI-related activities. In last few years, the ASC has provided approximately \$1 million per year to the Appraisal Foundation. The Appraisal Foundation and its two boards have undertaken activities that have benefited the States' appraiser regulatory programs. These Appraisal Foundation initiatives have included: a training program for the States' staff on investigating complaints against appraisers, development of a national appraiser examination, and information and training on USPAP and the appraiser qualification criteria. The ASC has implemented procedures to monitor the disbursements of grant funds to the Appraisal Foundation, including the engagement of a public accounting firm to audit the Appraisal Foundation for compliance with the ASC grant.
- Reporting Disciplinary Actions: The provisions of H.R. 3837 requiring States to report disciplinary actions to all other States is within the ASC's current authority. The ASC has also taken steps through the ASC web-based national appraiser registry to provide information on disciplinary actions to all States. The ASC has issued a policy statement that the States report disciplinary actions against appraisers to the ASC for inclusion in

the national appraiser registry. As noted above, at a minimum, a State is expected to submit disciplinary actions on a monthly basis. In the case of the most serious disciplinary actions, such as suspensions, revocations, and voluntary surrenders of credentials in lieu of disciplinary actions, the ASC strongly encourages States to notify the ASC immediately. The ASC also expects States to report less serious sanctions against an appraiser (*e.g.*, when an appraiser is required to obtain additional training). The ASC limits access to the disciplinary action data on the national registry. The States have access to all disciplinary actions and sanctions. The public has access to those disciplinary actions that affect the appraiser's ability to perform appraisals in federally related transactions and real estate related financial transactions (*i.e.*, suspensions, revocations, and voluntary credential surrenders). The ASC provides listserv notices (via email) to the States and other interested parties every night on disciplinary actions reported to the national appraiser registry.

- Minimum Qualification Requirements: The ASC agrees with the H.R. 3837 provisions to require States to adopt the Appraiser Qualification Board (AQB) criteria for licensing, training, and supervising appraisers. The federal financial regulatory agencies have the authority to set additional qualification criteria for licensing. It is our understanding that the agencies' appraisal regulations provide that a State licensed appraiser may be relied upon by a regulated institution if the ASC has not issued a finding of inconsistency of a particular State's licensing program with Title XI. While the States currently have the option to comply with the licensing criteria of the AQB, the ASC has issued a policy statement that the AQB licensing criteria are meaningful and encourages the States to adopt them. The ASC discloses on the national appraiser registry whether or not a State's licensing criteria meets the AQB criteria and whether each State licensed appraiser meets those criteria.
- Monitoring of State Appraiser Certifying and Licensing Agencies and Impose Interim Sanctions and Suspension: The ASC already monitors the States' appraiser regulatory programs, including the adequacy of the State's funding and staff resources. Currently, the ASC staff performs an on-site review of each State every two years. For States with weaknesses, the ASC staff visits more often. With regard to expansion of the ASC authority to impose interim sanctions against a State, the ASC asks that Congress provide additional clarification as to what types of sanctions are contemplated as appropriate sanctions, given the unique role of the ASC to monitor the States. Title XI provided the ASC with only one sanction (*i.e.*, nonrecognition of the State's appraiser regulatory program) that it could take when the ASC finds a State in noncompliance with Title XI. The ASC has adopted formal regulations governing nonrecognition of a State's program. Given the serious consequences of such an action, the ASC endeavors to work with States to promote Title XI compliance. The ASC's policy statements explain our expectations for a State's compliance with Title XI. The ASC has found that most States strive to ensure that their programs meet Title XI.
- Appraiser Independence: The ASC notes that appraiser independence is addressed by the FFIEC member agencies and in USPAP. The agencies have appraisal regulations with requirements for the independence of staff and fee appraisers. Further, the agencies have issued interagency guidance specifying that an appraiser "should be independent of the

loan and collection functions of the institution and have no interest, financial or otherwise, in the property or the transaction.” With regard to appraisal standards, USPAP’s Ethics Rule specifies that “an appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests.”

- Reciprocity: The ASC supports the efforts of Congress to require State reciprocity. Currently, Title XI mandates that a State offer temporary practice. While several States have limitations on licensing reciprocity for any professional designation, including appraisers, all States offer temporary practice for appraisers. The ASC has issued a policy statement detailing the ASC’s expectations for a State’s temporary practice. The ASC encourages reciprocity, but will consider a State’s temporary appraiser practice in assessing whether a State has barriers to an appraiser with a valid license or certification from one State practicing in its State.
- Appraiser Education: The ASC supports the efforts of Congress to promote quality appraiser education. During the on-site review of a State’s appraiser licensing and certification program, the ASC staff verifies that the State’s approved courses are consistent with the AQB criteria for both course content and delivery mechanism. When ASC staff finds inconsistencies, the matter is identified in the ASC letter to a State. The ASC defers to the States as to whether the current approach is acceptable.
- GAO Study on Improvements in Appraisal Process and Compliance Programs: The ASC is supportive of the H.R. 3837 provision to have GAO conduct a study to assess the effectiveness of Title XI initiatives and would be available to assist in this effort.

We appreciate the opportunity to comment on H.R. 3837. Please contact us if you have any further questions.

Sincerely,

Virginia M. Gibbs
ASC Chairman