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Appraisal Subcommittee

Federal Financial Institutions Examination Council

October 31, 2005

Jim Martin, Executive Director
Appraiser Licensing & Certification Board
101 East Capitol; Suite 430
Little Rock, AR 72201

Dear Mr. Martin:

Thank you for your October 19, 2005 letter requesting our comments regarding Act 2218, previously House Bill 2623, which was adopted by the Arkansas legislature on April 13, 2005. Under this Act, the Appraiser Licensing and Certification Board (“Board”) would be abolished on June 30, 2007, unless the legislature finds otherwise on the basis of several criteria listed in the Act. Moreover, the Act, among other things, directs the legislature to determine whether the Board’s appraiser regulatory program can be consolidated with programs of other State agencies. The ASC has concerns about the effects that this Act could have on the continuing operations of the Board.

Because of the Savings and Loan Crisis in the late 1980’s, Congress passed legislation subjecting the real estate appraisal profession to Federal oversight. That legislation, Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, (“Title XI”), among other things, established the Appraisal Subcommittee (“ASC”). The ASC is a Federal agency that oversees the operations of all State appraiser regulatory agencies (“State agencies”), including the Board, to ensure that they conform to Title XI. Arkansas is one of 56 Title XI jurisdictions that compose key components of this comprehensive national regulatory program. The Board is the Arkansas agency charged by State law with ensuring Arkansas’ compliance with Title XI.

We strongly believe that the sunset date applied to the Board should be extended, if not eliminated, given the Board’s responsibilities under Title XI. Under Arkansas’ current administrative and regulatory structure, if the Board were to cease to exist on July 1, 2007, Arkansas would suffer significant ramifications. Without a State agency to implement and oversee Title XI’s requirements, we would have no option but to determine that Arkansas would fail to comply with Title XI. As a result, all Arkansas licensed and certified appraisers would lose their eligibility to perform appraisals in connection with federally related transactions. The appraisers no longer would be eligible to perform appraisals in real estate related transactions involving FannieMae or FreddieMac. Moreover, the Federal Housing Administration within the U.S. Department of Housing and Urban Development no longer could insure mortgages based on appraisals prepared by Arkansas licensed or certified appraisers. As a result, the State’s residential and commercial real estate markets would be severely disrupted. Additionally, the livelihoods of Arkansas’ more than 800 certified and licensed appraisers would be jeopardized.

Regarding the Board’s possible consolidation into other State agencies, ASC Policy Statement 1 sets out the ASC’s standards regarding the structure and independence of State agencies. ASC Policy Statements interpret Title XI. Policy Statement 1, in pertinent part, states:

The ASC does not impose any particular organizational structure upon the States. It is recognized that each State may have legal, fiscal, regulatory or other valid constraints that determine the structure and organization of its [State agency]. States, however, should adopt and maintain an organizational structure for appraiser certification, licensing and supervision that avoids conflicts of interest or the appearance of such conflicts. Ideally, States should maintain totally independent State agencies answerable only to the governor or a cabinet level official who has no regulatory responsibility for real estate licensing/certification, promotion, development or financing functions ("realty related activities"). A State, however, may choose to locate its State agency within an existing regulatory body. Any State with its appraiser regulatory function in a department that regulates realty related activities must ensure that adequate safeguards exist to protect the independence of the appraiser regulatory function.

A State agency may be headed by a board, commission or individual. The organizational structure should provide maximum insulation for the State agency from the influence of any industry or organization whose members have a direct or indirect financial interest in the outcome of the agency's decisions.

Persons appointing officials to a State agency should not be associated or affiliated with an affected industry, i.e., they should not have a direct or indirect financial interest in realty related activities. A State agency head, appointed by the governor and confirmed by the State legislature, would generally be considered independent.

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The ASC strongly urges that State agency decisions, especially those relating to license or certificate issuance, revocation and disciplinary actions, not be made by State officials who also are responsible for realty related activities. State officials should accept and implement the actions of the appraiser board unless they are inconsistent with the public interest and trust. Additionally, such State agency decisions should be final administrative actions subject only to appropriate judicial review.

Please contact us if you have any questions.

Sincerely,

Ben Henson
Executive Director