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Appraisal Subcommittee

Federal Financial Institutions Examination Council

November 3, 1999

Carol Ellis, Director
Division of Professional Regulation
Cannon Building
861 Silver Lake Blvd., Suite 203
Dover, DE 19904-2467

Dear Ms. Ellis:

Thank you for your August 24, 1999 letter responding to our July 13, 1999 letter following up previous correspondence about our April 2, 1999 field review letter. Your most recent letter provided needed clarifying information, in particular regarding your complaint investigation and resolution process.

We are pleased to learn that your statutory system is working as intended and that the Council of Real Estate Appraisers ("Council") has been involved in that process by making decisions regarding investigative recommendations and by having Council contact persons appointed to work with the Division's Investigative Section ("Section"). If your system functions as you described, many of our concerns were unwarranted.

In our previous letters, we noted that all but one of the Section's investigators reviewing appraiser-related complaints do not have Uniform Standards of Professional Appraisal Practice ("USPAP") training; one investigator is a former appraiser Trainee, with minimal USPAP training. You responded that all of your investigators "have an extensive investigative backgrounds[,] and that "[t]here is absolutely no need to have all of [them] trained in USPAP given the small number of complaints generated and the availability of a Council contact person . . ." Our concern was based on our understanding that investigators were not using Council contact persons as a source of USPAP expertise. If you are appointing Council contact persons, and they are being used appropriately, our concern has been addressed.

Two issues remain. First, we remain concerned about the dismissal of cases when you find that there is "no harm to the public." We agree with you that taking such an action is an appropriate exercise of discretion by either the Division or the Attorney General. Our concern essentially relates to interpreting "harm" only as it relates to, for example, monetary or physical damages to a member of the public, *i.e.*, the traditional concept of harm to the public used by States in regulating professions. We have found that some States have dismissed complaints containing obvious USPAP violations when the State concluded that there was "no harm to the public."

That is not adequate for Federal purposes under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("Title XI"). The occurrence of any USPAP violation is significant, and deserves an appropriate State sanction. In the example cited in our April 21st field review letter, even though an appraiser was not qualified to perform appraisals at the certified general level, "no harm to the public" was found. This appraiser was allowed to appraise properties for which he or she was not qualified. Even if that appraiser were to have performed

that appraisal well, that appraiser was not legally competent to perform that work. Unlike the regulation of other professions, the regulation of real estate appraisers contains a significant component of Federal interest requiring States to enforce the Appraiser Qualification Board's qualifications for certified real estate appraisers and the Appraisal Standards Board's USPAP. In sum, when determining "harm," please ensure that you consider these duties under Federal law, *i.e.*, Title XI.

Finally, we remain very concerned about your continuing inability to conform to our National Registry data and fee submission policies. While we appreciate that you have "acknowledge[d] and accept[ed] responsibility for the confused documentation with regard to the [National] Registry" and have assigned those duties "to a different staff person with proven abilities[.]" the situation still has not been rectified. Despite Delaware's repeated assurances to submit data files each month, we have not received a valid Delaware data file since December 3, 1998. The licenses and certifications of all Delaware real estate appraisers expired on October 31, 1999. If we do not receive an acceptable National Registry data file before November 30, 1999, we will have no choice but to remove all Delaware licenses and certifications from the National Registry and our system will inform the public, including financial institutions and appraisers, that your appraisers no longer can perform appraisals in connection with federally related transactions and HUD/FHA, FNMA, and FreddieMac real estate transactions. The gravity of the situation speaks for itself.

Please contact us if you have any questions.

Sincerely,

Ben Henson
Executive Director

cc: Philip McGinnis, Chairman, Council of Real Estate Appraisers