



1. I am the Executive Director for the Appraisal Subcommittee.

2. The Appraisal Subcommittee ("ASC") of the Federal Financial Institution Examination Council ("FFIEC") was created in August 1989, pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("Title XI"). Title XI was created to provide protection to Federal financial and public policy interests in real estate related transactions by requiring that real estate appraisals used in connection with Federally related transactions be performed in writing, in accordance with uniform standards, by persons of demonstrated competency and whose professional conduct would be subject to effective supervision.

4. The ASC has six members, designated by the heads of the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, (collectively, "Federal financial institutions regulatory agencies") and the U.S. Department of Housing and Urban Development ("HUD").

5. The specific duties of the ASC are set out at Section 1103 of Title XI. In relevant part, these are:

- To monitor the requirements established by the States for the certification and licensing of appraisers, including a code of professional responsibility. The ASC reviews each State's compliance with the requirements of Title XI and is authorized by Title XI to take action against non-compliant States;
- To maintain a national registry of State licensed and certified appraisers who are eligible to perform

2. AFFIDAVIT OF BENNY R. HENSON

appraisals in connection with Federally related transactions; and

- To monitor and review the practices, procedures, activities, and organizational structure of the Appraisal Foundation.

6. To fulfill its State-oversight responsibilities, the ASC, among other activities, conducts onsite reviews of State appraiser regulatory programs. As part of this review process, the ASC focuses on how each State enforces compliance with Title XI. This includes reviewing whether the State's statutory and regulatory scheme conforms to, or conflicts with, Title XI.

7. The ASC must monitor each State's appraiser licensing and certification regulatory program to ensure that the State:

- Recognizes and enforces the standards, requirements, and procedures prescribed by Title XI;
- Has adequate authority to permit it to carry out its Title XI-related functions; and
- Makes decisions concerning appraisal standards, appraiser qualifications, and supervision of appraiser practices consistent with Title XI.

8. The ASC generally satisfies these responsibilities through onsite field reviews of State appraiser regulatory programs and by maintaining close communications with appraisers, State and Federal agencies, and users of appraisal services. Each State program is reviewed routinely at least once every three years. Additional reviews are scheduled on an "as needed" basis.

9. Each field review assesses all facets of a State's appraiser regulatory program. Particular emphasis is placed on the State's

enforcement program.

10. Many States have legislative schemes that have created appraiser regulatory program structures similar to Montana's, using oversight Commissions or Boards. All States have incorporated the Uniform Standards of Professional Appraisal Practice ("USPAP"), by reference or otherwise, into their appraiser regulation statutes and/or regulations. About two-thirds of the States incorporate USPAP by a general reference. About one-third of the States use more specific language to incorporate USPAP.

11. The ASC monitors and is concerned with whether States have effective enforcement programs that require the use of USPAP as the minimum appraisal quality standard, and whether States maintain enforcement programs to assure appraiser compliance with USPAP and discipline appraisers for non-compliance.

12. Certain Federal agencies, in addition to Federal financial institution regulatory agencies, require that appraisals used in connection with their transactions comply with USPAP. For example, Section 142 of the Department of Housing and Urban Development Reform Act of 1989 requires that appraisals of all property to be insured by the Federal Housing Administration ("FHA") be performed in accordance with uniform standards, by State certified or licensed appraisers whose professional conduct is subject to effective supervision.

13. Should the ASC determine that a State fails to recognize and enforce the standards, requirements, and procedures required

under Title XI, or is not granted adequate authority to permit the State to carry out its functions, or that the State's decisions concerning appraisal standards and supervision of appraisal practices are not made in a manner which carries out the purposes of Title XI, the ASC is empowered under Section 1118, 12 U.S.C. 3347, to issue written findings to that effect and to order the rejection of State appraiser certifications and licenses after a hearing conducted under 12 CFR part 1102, subpart B.

14. The issuance of such a "non-recognition order," in effect, would prohibit all agencies, instrumentalities, and federally recognized entities under Title XI from using the services of Montana certified and licensed real estate appraisers. Entities prohibited from using Montana appraisers would include federally insured financial institutions (*i.e.*, banks, savings and loans, and credit unions) and certain Government Sponsored Enterprises, such as Fannie Mae and Freddie Mac. Additionally, Montana's appraisers could no longer be used in HUD's FHA-insured residential real estate program.

15. The issuance of such a non-recognition order would impact every facet of Montana's real estate market. Impacted lenders and other users of appraisal services would have to bring in appraisers from other States to provide appraisal services that no longer could be performed by Montana appraisers.

16. A non-recognition order could have significant impact on the livelihoods of Montana's State certified or licensed

appraisers. Many would have to suspend, or significantly curtail, their business operations.

17. A non-recognition order would impact Montana citizens and others wishing to purchase homes or commercial real estate where appraisals by State certified or licensed appraisers are required.

18. If Montana is unable to enforce the requirements of Title XI, including compliance with USPAP, then I, as Executive Director of the ASC, will have no choice but to recommend immediately to the ASC that it initiate a non-recognition proceeding against Montana.

18. Further Affiant sayeth not.

DATED this 30<sup>th</sup> day of March, 2001.

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Benny R. Henson

SUBSCRIBED AND SWORN TO before me this 30<sup>th</sup> day of March, 2001.

( SEAL )

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Notary Public for the District of Columbia  
My Commission expires: \_\_\_\_\_.

CERTIFICATE OF SERVICE

I, G. Curtis Drake, attorney for Defendants, above-named, hereby certify that I mailed a true and correct copy of the **AFFIDAVIT OF BENNY R. HENSON**, postage fully prepaid by U. S. Mail, on this \_\_\_\_ day of April, 2001, to the following:

Gregory G. Gould, Esq.  
LUXAN & MURFITT, PLLP  
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G. Curtis Drake  
Attorney for Defendants