

Appraisal Subcommittee
Federal Financial Institutions Examination Council

December 17, 1997

Fred L. Gagnon, Chairman
New Hampshire Real Estate Appraisal Board
25 Capitol Street, Room 426
Concord, NH 03301-6312

Dear Mr. Gagnon:

Thank you for your cooperation and your staff's assistance in the October 14-15, 1997, Appraisal Subcommittee ("ASC") review of the New Hampshire Real Estate Appraiser Board ("Board") and appraiser regulatory program ("Program"). We would like to take this opportunity to thank you for your help during the course of this review and to applaud your assertiveness in seeking reciprocal relationships with other States and ensuring the quality of approved course offerings through regular audits.

In a letter dated January 14, 1993, we relayed our findings and recommendations resulting from our October 15-16, 1992 field review of your Program. At that time, we noted that New Hampshire did not offer temporary practice in accordance with § 1122 of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("Title XI"). You were also asked to eliminate the substitution of a college degree for pre-certification/licensure appraisal education. We are pleased these issues have been corrected by amendments to your statutes or rules. We noted, however, that the New Hampshire appraiser regulation statute contained inaccurate references to the ASC in regard to functions actually performed by the Appraiser Qualifications Board ("AQB"). For example, Section 310-B:9 indicated that licensed and certified appraisers must possess experience requirements adopted by the Board based on "criteria established by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council." We again request that these inaccurate references be corrected with "housekeeping legislation," when possible.

Our current review identified two areas that need to be improved before your Program is in full compliance with Title XI.

- **Board rules have not been amended to reflect the increase in hours of education, experience and continuing education required as of January 1, 1998.**

Title XI requires certified appraisers to meet the AQB's minimum qualification criteria. Four years ago, the AQB increased its certification criteria, with an effective date of January 1, 1998. Despite this extended period of time, only an initial draft of the needed rule change has been prepared. No Board action had been taken at the time of our review and the formal notice and comment process required to engage in rulemaking was not started.

If such changes are not in effect on January 1, 1998, you cannot legally certify new appraisers unless they meet the AQB's revised criteria. Therefore, from January 1, 1998, until

the time conforming changes are implemented, you must ensure that each applicant for certification qualifies for certification under the AQB's revised Appraiser Qualifications Criteria for Certified Residential or Certified General Appraiser Classifications, as appropriate. Please understand that if New Hampshire continues to fail to conform with these AQB criteria for a significant time, renewals of existing certifications could be similarly affected because of the increase in continuing education requirements.

- **The Board does not believe it has jurisdiction over all appraisal-related activities performed by licensed and certified appraisers.**

While the Board investigates all complaints regarding State licensed or certified appraisers, few disciplinary cases are actually brought before the Board for action. In those cases, the Board may take action such as revoke or suspend the license or certificate, if the appraiser is found to have, among other things:

1. Committed violations of standards for the development or communication of real estate appraisals;
2. Failed or refused to exercise reasonable diligence in developing an appraisal, preparing an appraisal report or communicating an appraisal; or
3. Developed or prepared an appraisal report in a negligent or incompetent manner.

We understand that the reason for the dearth of cases is that most complaints have been considered to involve activities outside of the Board's jurisdiction. Based on your appraiser regulatory statute's definition of "appraisal" as a "written Statement independently and impartially prepared by a licensed or certified appraiser and used in connection with a federally related transaction under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.-.. [,]" two successive Assistant Attorneys General assigned to the Board have ruled that the Board does not have jurisdiction to take action if the transaction value is less than \$250,000. This amount apparently is based on the threshold amount established by the Federal bank regulatory agencies.¹

The ASC has stated in ASC Policy Statement 10 that Title XI intends for the States to supervise all appraisal-related activities and practices of persons who are certified or licensed. Federal agencies or employers of appraisers must be able to rely on the State's effective regulation, supervision and discipline of its certified and licensed appraisers to assure their professional competence. Therefore, a State agency with knowledge of any inappropriate behavior by certified or licensed appraisers committed in connection with an appraisal of a non-federally related transaction should take appropriate action to investigate that behavior and to discipline the appraiser. The Board, therefore, must amend Chapter 500 of its regulations or take whatever action is necessary to broaden its jurisdiction to conform with ASC Policy Statement 10.

¹ The State's \$250,000 threshold does not consider the different thresholds established by the National Credit Union Administration. The State appears to apply the \$250,000 threshold to all real estate related financial transactions, including those pertaining to Fannie Mae, Freddie Mac, FHA and unregulated mortgage companies.

Please respond to our findings and recommendations within 60 days from the date of this letter. Until the expiration of that period or the receipt of your response, we consider this field review to be an open matter. After receiving your response or the expiration of the 60-day response period, whichever is earlier, this letter, your response and any other correspondence between you and the ASC regarding this field review become releasable to the public under the Freedom of Information Act and will be made available on our Web site.

If you have any questions regarding these issues, please do not hesitate to contact us.

Sincerely,

Herbert S. Yolles
Chairman

cc: Sally Sullivan, Administrative Assistant