

**1989
ANNUAL REPORT**

**APPRAISAL SUBCOMMITTEE
of
FEDERAL FINANCIAL INSTITUTIONS
EXAMINATION COUNCIL**



January 31, 1990

1776 G Street, NW, Suite 701 • Washington, DC 20006

The Honorable J. Danforth Quayle
President of the Senate
Room S-212, The Capitol
Washington, D.C. 20510

Dear Mr. President:

Pursuant to the provisions of section 1103 of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (P.L. 101-73, 103 Stat. 183), (FIRREA), I am pleased to submit the 1989 Annual Report of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

BACKGROUND

The Appraisal Subcommittee (Subcommittee) was authorized on August 9, 1989 pursuant to Title XI of FIRREA. The purpose of Title XI of FIRREA is "to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision." The Subcommittee was established within the Federal Financial Institutions Examination Council ("FFIEC") to provide Federal oversight of the real estate appraisal process as it relates to federally related real estate transactions.

The Subcommittee currently has five members. Members of the Subcommittee are designated by the head of each of the five financial institutions regulatory agencies which comprise the FFIEC. The members of the Appraisal Subcommittee are listed in Appendix A. Section 142 of the Department of Housing and Urban Development Reform Act of 1989 (P.L. 101-235, 103 Stat. 1987) recently authorized the addition of a Subcommittee member to be designated by the Department of Housing and Urban Development. We expect this new Subcommittee member to be designated early in 1990.

The principal responsibilities granted by FIRREA to the Appraisal Subcommittee are to:

- o Monitor the requirements established by States for the certification and licensing of appraisers;
- o Monitor the requirements established by the Federal financial institutions regulatory agencies and the Resolution Trust Corporation with respect to appraisal standards and the determination of which federally related transactions shall require the services of licensed or certified appraisers;

- o Maintain a national registry of State certified and licensed appraisers;
- o Transmit an annual report to Congress regarding the activities of the Appraisal Subcommittee during the preceding year, and
- o Monitor and review the practices, procedures, activities and organizational structure of the Appraisal Foundation.

FFIEC Working Group

Early in September 1989, staff members of the FFIEC agencies, recognizing their responsibilities under Title XI to promulgate a proposed regulation, began meeting on an *ad hoc* basis. This *ad hoc* group, known as the "working group," continues to play an important role in assisting the agencies and the Subcommittee in developing policy in the area of appraisals.

The goal of the working group has been to develop proposed regulations prescribing appropriate standards for the performance of real estate appraisals in connection with federally related transactions and prescribing which federally related transactions should be appraised by State certified appraisers and which by State licensed appraisers (see sections 1110 and 1112 of Title XI). Toward that end, this group reviewed the existing appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. As a result, the chairman of the Appraisal Subcommittee, on behalf of the working group, provided a number of recommended changes to the Appraisal Foundation for consideration as amendments to the Uniform Standards of Professional Appraisal Practice (USPAP). This action was taken to assure that the legislative intent of quality appraisals is met with a minimum of variance between the Appraisal Standards of the Appraisal Foundation (USPAP) and those of the individual FFIEC member agencies.

A regulatory proposal on appraisal standards is being developed jointly by the working group. This document will be used by each FFIEC agency as a basis for a proposed rule which each agency expects to propose within the timeframe required under section 1111 of Title XI.

Appraisal Subcommittee Activity During 1989

The members of the Appraisal Subcommittee were formally designated and began meeting in November 1989. The Subcommittee has generally met on at least a weekly basis since inception. The principal functions of the Subcommittee are stated in section 1103 of Title XI of FIRREA. Subcommittee activity and status relative to each function are as follows:

1. Monitor the requirements established by States for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility.

The Subcommittee developed and issued, on January 18, 1990, policy guidance addressing State certification issues. The full text of that policy statement is attached as Appendix B. The guidelines are intended to 1) facilitate timely implementation of the provisions of Title XI of FIRREA, 2) promote the independence of the State appraisal

regulatory function, 3) reduce conflicts of interest, and 4) address concerns regarding the issues of grandfathering and dual licensing. The policy statement invited public comments on the guidelines. Such comments will be reviewed carefully by the Subcommittee to determine whether additional guidance will be necessary.

2. Monitor the requirements established by the Federal financial institutions regulatory agencies and the Resolution Trust Corporation with respect to -

A) appraisal standards for federally related transactions under their jurisdiction, and

B) determinations as to which federally related transactions under their jurisdiction require the services of a State certified appraiser and which require the services of a State licensed appraiser.

The *ad hoc* working group was charged with the task of developing consistent regulations that address appraisal standards and specify which transactions require a State-certified appraiser and which can be conducted by a State-licensed appraiser. The Subcommittee will continue to monitor the issuance of both proposed and final regulations by each FFIEC member agency. Additional monitoring activities will be determined following implementation of each agency's regulation.

3. Maintain a national registry of State certified and licensed appraisers who are eligible to perform appraisals in federally related transactions.

Preliminary discussions have taken place within the Subcommittee relative to how this function may be accomplished. This issue will become increasingly important once States begin to implement the provisions of Title XI by certifying and licensing appraisers. Section 1119 of Title XI requires that, by July 1, 1991, all appraisals performed in connection with federally related transactions shall be performed only by individuals certified or licensed in accordance with Title XI requirements, unless that date is extended by the Subcommittee for an individual State under the provisions of Title XI. The Subcommittee will take timely action to ensure that a national registry is established and maintained as required by Title XI.

4. Transmit an annual report to the Congress not later than January 31 of each year which describes the manner in which each function assigned to the Appraisal Subcommittee has been carried out during the preceding year.

This document represents the first of the required reports. The Subcommittee expects that a more detailed and comprehensive report will be issued following completion of its first full year of operation.

5. Monitor and review the practices, procedures, activities, and organizational structure of the Appraisal Foundation.

The Subcommittee has met with representatives of the Appraisal Foundation in order to develop a working relationship and to better understand this organization. Additional monitoring and review procedures will be established during 1990 to assure that this responsibility is met by the Subcommittee.

Future Plans of the Appraisal Subcommittee

The Subcommittee has reviewed the provisions of FIRREA to establish goals and plans for the future direction of the activities of the Subcommittee. The following preliminary goals and projects have been established:

- o Funding of Subcommittee activities;
- o Staffing;
- o Registry of State certified and licensed appraisers;
- o Budget;
- o State certification guidelines;
- o Monitoring State compliance;
- o Monitoring Agency compliance;
- o Monitoring the Appraisal Foundation;
- o Establishing operating rules of the Subcommittee;
- o Studies required under Title XI;
- o Discrimination issues related to appraisers; and
- o Grant administration.

Although progress is continuing in each of the above areas, a considerable portion of the Subcommittee's time has been spent in resolving numerous administrative matters related to establishing what can be viewed, in essence, as a new Federal agency. Among those matters currently being addressed are funding of the Subcommittee activities, administrative assistance in procurement, budgeting, personnel, payroll and related matters. As of the report date, the Subcommittee was in the process of recruiting a senior staff director. This position will be vital in resolving the administrative issues.

The Subcommittee members expect that significant progress will be made in the coming year in discharging the Subcommittee's responsibilities under Title XI. The Subcommittee looks forward to close cooperation with Congress, the Federal regulatory agencies, the States, the Appraisal Foundation, the appraisal industry and other affected parties in ensuring that the goals set forth in Title XI are fully achieved.

Sincerely,

KEVIN M. BLAKELY
Chairman

APPENDIX A

The members of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council are:

Chairman Kevin M. Blakely, Deputy Comptroller for Special Supervision, Office of the Comptroller of the Currency.

Timothy P. Hornbrook, Director, Department of Supervision, Office of Examination and Insurance, National Credit Union Administration.

Robert F. Miallovich, Assistant Director, Office of Policy, Division of Supervision, Federal Deposit Insurance Corporation.

Mary C. Short, Deputy Director for Supervisory Programs, Division of Supervision Policy, Office of Thrift Supervision.

Richard Spillenkothen, Deputy Associate Director, Division of Banking Supervision and Regulation, Federal Reserve Board.

APPRAISAL SUBCOMMITTEE
GUIDELINES REGARDING
STATE CERTIFICATION AND LICENSING OF APPRAISERS

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) establishes an Appraisal Subcommittee of the Federal Financial Institutions Examination Council. The responsibilities of the Appraisal Subcommittee include, among other things, monitoring the appraiser certifying and licensing agencies, which states may establish to carry out the purposes of Title XI. Section 1116 (d) of this Title instructs the Subcommittee not to recognize appraiser certifications and licenses from states whose appraisal policies, practices or procedures are found to be inconsistent with Title XI.

The legislative history accompanying Title XI indicates that states should adopt an organizational structure for implementing their appraiser licensing, certification and supervision functions that avoids potential conflicts of interest. Recognizing that each state has fiscal constraints or other factors that could influence the structure and location of the agency charged with licensing and certifying appraisers, the legislative history also indicates a desire to avoid imposing any particular organizational structure upon the states. However, while this suggests that a state could choose to locate the appraisal regulatory function in the same department as the regulation of real estate licensing, promotion, development or financing functions (hereinafter "realty related activities"), the organizational structure of the department must provide adequate safeguards to ensure that the appraisal regulatory function is independent of realty related activities.

In response to numerous requests from states and other interested parties, the Subcommittee is issuing these guidelines to assist the states, territories and the District of Columbia in the establishment of appropriate organizational structures for licensing and certifying appraisers. The guidelines are intended to facilitate the implementation of Title XI, promote the independence of the appraisal regulatory function, reduce conflicts of interest, and address the grandfathering and dual licensing of appraisers. Given the importance of these objectives, the Subcommittee will accept and consider public comments on the issues addressed by these guidelines.

GUIDELINES

LOCATION OF THE AGENCY

The Subcommittee believes it is preferable that the certification and licensing function be established as a totally independent regulatory agency answerable to the governor or a cabinet level officer who has no regulatory responsibility for realty related activities. (In these guidelines, the appraisal regulatory body will be referred to as the "agency", although it may also be a board, commission, or individual). Such a structure would provide maximum insulation for the agency from influences of any industry or organization whose members have a direct or indirect financial interest in the outcome of the agency's decisions (hereinafter "affected industry").

If, due to fiscal or other constraints, a separate agency is not feasible, the appraisal certification and licensing function should be located within a state regulatory body which is structured to adequately eliminate the influences of an affected industry over the appraisal function.

APPOINTMENT OF THE AGENCY HEAD

The appointment of the agency head or members of the appraisal board should be made by an individual or committee not associated or affiliated with an affected industry. (An individual would be affiliated or associated with an affected industry if the individual had a direct or indirect pecuniary interest in the industry).

To illustrate:

An autonomous agency head, appointed by the governor and subject to confirmation by the legislature would generally be considered to be properly appointed.

An individual or board chosen by or answerable to a committee or commission comprised of a majority of real estate appraisers, real estate brokers, financial institution executives or other members of an affected industry would not meet the criteria for being independently appointed.

INDEPENDENCE FROM AFFECTED INDUSTRIES

If the agency is directed by an individual, that person should not be actively engaged in the appraisal business or any other affected industry for the term of appointment or employment, and for a reasonable period thereafter.

If the agency is directed by a board or commission, the members of that board should represent the broad public interest, and the statute, regulation, or order creating that body should not permit a majority of the board to come from or be dominated by any one industry or profession. Moreover, after its initial establishment, the composition of the board should continue to remain free from domination by any one industry or profession.

INDEPENDENCE OF DECISION MAKING

Decisions as to whether to license and certify, to discipline or to de-license or de-certify appraisers should not be made by the same state officials whose responsibilities include realty related activities.

Decisions of the state appraiser regulatory agency regarding whether to license or certify, to discipline or to de-license or de-certify appraisers should be final administrative action subject only to appropriate judicial review.

QUALIFICATION CRITERIA

All appraisers subject to the licensing or certification provisions of Title XI must be qualified through appropriate testing and experience requirements established by state law.

Certified: Individuals designated as certified real estate appraisers shall have, at a minimum, 1) satisfied the criteria for certification issued by the Appraisal Qualifications Board of the Appraisal Foundation, and, 2) passed a state administered examination which is consistent with the Uniform State Certification Examination issued or endorsed by the Appraisal Qualifications Board of the Appraisal Foundation.

Licensed: States should establish meaningful qualification standards for licensed appraisers, including testing, experience and educational requirements that are adequate to demonstrate knowledge and competency.

Additional qualifications for licensing and certification may be required by any state or federal agency that considers such qualifications necessary to carry out responsibilities under Title XI.

EXEMPTIONS AND GRANDFATHERING

No individual or group of individuals shall be deemed exempt from meeting the criteria established for licensing or certification, or be otherwise "grandfathered" into the system. This is not meant to preclude states from recognizing existing licenses or certification designations of individuals who currently meet existing state licensing or certification requirements, provided those requirements are fully consistent with the provisions of Title XI.

MANDATORY DUAL LICENSING

Consistent with the spirit and intent of Title XI, state laws may not require any applicant for appraisal certification or licensing to hold other occupational licenses as a condition of obtaining a license or certification designation as a real estate appraiser.

OTHER

States should ensure that an appropriate code of professional responsibility is incorporated into their certification and licensing requirements.

To ensure that their licensing and certification procedures are not disapproved by the Subcommittee, states should adhere to the provisions set forth in Title XI and adopt policies, practices and procedures that are consistent with the purposes of the law. The Subcommittee will exercise the authority granted by Title XI to ensure the independence of the appraisal regulatory function within the state systems. The Subcommittee will meet its oversight responsibilities by reviewing each state's compliance with the intent of Title XI in its entirety.

Additional policy guidance may be provided by the Subcommittee, as necessary, to further assist in the effective implementation of Title XI.