

January 31, 1992

The Appraisal Subcommittee of the
Federal Financial Institutions Examination Council
Washington, D. C. 20006

The President of the Senate
The Speaker of the House of Representatives

Pursuant to § 1103 of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"),¹ I am pleased to submit to Congress the 1991 Annual Report of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC").

Background

The ASC was created on August 9, 1989, pursuant to Title XI of FIRREA. Section 1101 of Title XI states that the purpose of Title XI is "to provide that Federal financial 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 ASC was established within the Federal Financial Institutions Examination Council ("FFIEC") to provide oversight of the real estate appraisal process as it relates to federally related transactions, as they are defined in § 1121(4) of Title XI.

¹Public Law No. 101-73, 103 Stat. 511 (1989), as amended by Public Law Nos. 102-233 and 102-242, 105 Stat. 1761 and 2236, respectively; 12 U.S.C. §§ 3310, 331-3351.

The ASC is composed of six members, each of whom is designated by the head of their respective agencies. These agencies are the five Federal Financial Institutions Regulatory Agencies ("Agencies")² and the Department of Housing and Urban Development. Past and current members of the ASC are listed in Appendix A.

Section 1103 of Title XI sets out the ASC's general responsibilities. The Section authorizes the ASC to:

- o Monitor the requirements established by the States, territories and the District of Columbia ("States") for the certification and licensing of appraisers (the ASC must review each State's compliance with the requirements of Title XI and is authorized by Title XI to take action against non-complying States);
- o Monitor the requirements established by the Agencies and the Resolution Trust Corporation ("RTC") regarding appraisal standards for federally related transactions and determinations of which federally related transactions will require the services of State licensed or State certified appraisers;
- o Maintain a National Registry of State licensed and State certified appraisers qualified to perform appraisals in federally related transactions³ ("Registry");
- o Monitor and review the practices, procedures, activities and organizational structure of the Appraisal Foundation; and
- o Transmit an annual report to Congress regarding the activities of the ASC during the preceding year.

²Section 1121(6) of Title XI defines the Agencies as The Board of Governors of the Federal Reserve System ("Board"), the Federal Deposit Insurance Corporation ("FDIC"), the Office of the Comptroller of the Currency ("OCC"), the Office of Thrift Supervision ("OTS"), and the National Credit Union Administration ("NCUA").

³Each State is responsible under § 1109 of Title XI for transmitting to the ASC an annual Registry fee of \$25 respecting each qualifying appraiser. These fees can be used by the ASC to maintain the Registry, support its activities under Title XI, to make grants to the Appraisal Foundation and for other stated purposes.

ASC Activities During 1991

During 1991, the ASC implemented its previous year's plan by hiring a permanent staff and became a fully operational agency. Attached at Appendix B are documents summarizing the ASC's financial position for fiscal year 1991 and presenting its budget for fiscal year 1992. In March 1991, the first member of the ASC's permanent staff started work. By the end of the year, eight persons were on board. The staff, as identified in Appendix C, consists of:

- o An Executive Director;
- o An Associate Director for Programs and Policy, with a staff of one policy analyst (another analyst was due to begin work at the beginning of 1992);
- o A General Counsel and Staff Attorney;
- o An Associate Director for Administration; and
- o A support staff of two.

The ASC believes that, with little more than this core staff, it will be able to carry out fully the requirements of Title XI.

Because of the addition of permanent staff, a search for larger office quarters became necessary in the latter part of 1991. To take advantage of economies of scale, the ASC and the FFIEC decided to move together to new facilities. The ASC has obtained larger quarters and expects to relocate to them during the first half of 1992.

By late Spring 1991, the ASC's meetings changed from weekly working sessions to bi-weekly policy setting meetings with much of the day-to-day activity assumed by the staff. To provide the public with information on how the ASC conducts its business, the ASC published in the Federal Register, on June 21 and July 22, 1991, Rules of Operation and a delegation of authority to the ASC Chairperson. The Rules of Operation largely codified the informal procedures under which the ASC operated since its inception. The Rules described, among other things, the organization of ASC meetings, notice requirements for meetings, quorum requirements and certain practices regarding the disclosure of information. The ASC also delegated to its Chairperson authority regarding matters of internal administration, including prescribing a system of administrative control of funds and reallocating budgetary resources within certain limits. The Rules and the delegation can be found in Appendix D.

Throughout the year, the ASC and its staff continued to participate in meetings with a variety of appraisal industry and other related organizations.

A brief discussion of ASC activities relative to each ASC responsibility under Title XI 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 ASC continued its program of reviewing proposed State legislation, statutes and regulations regarding State appraiser licensing and certification with a view towards providing States with ongoing guidance respecting Title XI compliance. The ASC responded to many letters from State officials and other interested persons and handled many questions and issues directly with the States by telephone. In addition, the ASC sent a letter to each State on June 19, 1991, requesting a package of its most current appraiser laws and regulations. By year-end, the ASC had received this information from most States. This letter is in Appendix E.

In response to written complaints from several members of a State's Appraisal Committee, the ASC, on August 15 and 16, 1991, conducted several, on-site, fact finding interviews. The ASC is currently working with the State to ensure its program complies with Title XI.

To facilitate the ASC's monitoring of individual State appraiser licensing and certification programs, the ASC formulated an overall framework for conducting State field reviews. Prior to initiating a field review, the ASC will require the subject State to respond to a uniform set of preliminary questions. These questions will elicit data from the State about its:

- o Enabling legislation;
- o Board or commission organizational structure and budget;
- o Safeguards to assure the board or commission's independence of decision making;
- o Appraiser recordkeeping system;
- o License and certification categories and appraiser experience and education requirements;
- o Course approval mechanisms;
- o Test provider and test data;
- o Temporary practice and reciprocity procedures;
- o Appraiser user complaint procedures and State follow through; and
- o Program for disciplining appraisers, including the suspension or revocation of licenses and certifications.

In October and November of 1991, the ASC conducted two pilot field reviews. At this early stage in the ASC's monitoring of State implementation of Title XI, these reviews were oriented toward understanding the State Appraiser Regulatory Agency's ("State Agency's") organization, its education and experience thresholds, the administration of its education requirements, the types of licensure, certification and testing requirements, and the availability of temporary practice and reciprocal practice procedures among the States. These pilot reviews benefitted both the State and the ASC by establishing better lines of communication and by clarifying State and ASC duties, responsibilities and expectations. At year-end, the ASC was at work on formal review letters to these States.

As part of its ongoing State monitoring program, the ASC issued four Advisories to the States and other interested persons during 1991, which are in Appendix F. On January 25, 1991, the ASC published Advisory 91-1. The Advisory expressed the ASC's willingness to accept a second classification of certified appraisers -- "certified residential real estate appraiser" -- if individual States determined it was necessary. The Appraiser Qualifications Board of the Appraisal Foundation

("AQB") proposed and adopted appropriate requirements for the new classification, and the ASC subsequently recognized the classification.

On October 3, 1991, the ASC issued Advisory 91-2 respecting discrimination against education course providers based on non-affiliation with certain professional organizations. The ASC advised States to review their internal procedures and to take steps to ensure that all educational course providers are afforded equal treatment respecting course review fees, timeliness of review, approval, and course location requirements.

On October 25, 1991, the ASC published Advisory 91-3 about State Agency temporary practice requirements that may be inconsistent with § 1122(a) of Title XI. The Advisory emphasized that Title XI contemplates the free flow of qualified appraisers across State lines to the greatest possible extent. The ASC requested States to review their proposed and adopted rules, regulations and internal written and unwritten procedures respecting temporary practice to ensure that they do not impose unreasonable restraints on temporary practice or operate to prohibit the temporary practice of appraisers licensed or certified in another State.

The last Advisory, 91-4, was issued by the ASC on December 20, 1991, and discussed recent amendments to Title XI of FIRREA.⁴ The amendments generally: (1) extended no later than December 31, 1992, the deadline by which all appraisals in connection with federally related transactions must be performed by State licensed or State certified appraisers; (2) clarified that the ASC cannot set qualifications or experience requirements for the States in licensing real estate appraisers, including a *de minimis* standard; and (3) revised the temporary waiver provisions of Title XI. The Advisory informed States of the existence and extent of the Congressional action and provided guidance regarding the meaning of those amendments and their effects on States and the ASC. In general, the ASC informed the States that the extension was voluntary, *i.e.*, each State could choose to implement its Title XI system before December 31, 1992, and encouraged each State to proceed in its efforts to implement Title XI as soon as reasonably possible. The ASC also asked each State to provide the ASC with written notification as soon as possible of the date when its Title XI system is operative.

On July 25, 1991, the ASC issued a press release about the use of correspondence courses and video and remote television offerings to meet State licensing, certification and continuing education classroom hour standards. See Appendix G. In its release, the ASC recognized and endorsed the AQB's June 25, 1991 Interpretations/Clarifications of the Appraiser Qualifications Criteria. Previously, the AQB only recognized educational courses taught by live instructors in classroom situations. This interpretation for the first time allowed correspondence courses to be used by appraisers, particularly those in rural or remote areas.

⁴Section 701 of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991, Pub. L. No. 102-233, 105 Stat. 1761, and § 472 of the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. No. 102-242, 105 Stat. 2236.

The ASC also took action in a number of other areas of interest to the States. Consistent with § 1119(a) of Title XI, the ASC, on May 1 and June 28, 1991, published in the Federal Register with FFIEC's concurrence two orders extending until December 31, 1991, the time in which State certified or licensed appraisers must be used to perform appraisals in connection with federally related transactions. See Appendix H. For all but one U.S. jurisdiction, Palau, the ASC made a written finding that each had made substantial progress in establishing a State certification and licensing system that appears to conform to the provisions of Title XI.

On May 20, 1991, a memorandum from the ASC was distributed by the Agencies to chief executive officers of regulated financial institutions reminding them of their responsibility under Title XI and Agency rules and regulations not to discriminate in the selection or hiring of real estate appraisers based on an appraiser's membership or lack of membership in particular appraisal organizations or on having certain professional designations. This memorandum is attached as Appendix I. The memorandum specifically requested institution management to "take steps necessary to assure that written policies and practices conform with the . . . requirement." This memorandum was widely distributed to States, appraisers, and appraiser organizations.

On June 6, 1991, the ASC published in the Federal Register its Revised Guidelines Regarding State Certification and Licensing of Appraisers. The Revised Guidelines, which can be found in Appendix J, restated, consolidated and modified proposed Guidelines that were previously published for comment on January 18, 1990. The Revised Guidelines assisted States in establishing effective certification and licensing procedures for real estate appraisers involved in federally related transactions. The Revised Guidelines reflected the general framework that the ASC will use in reviewing State appraiser regulatory programs for compliance with Title XI. For example, the ASC described its overall policies regarding the structure of State Agencies and independence in their decision making, appraiser qualification criteria for licensing and certification, temporary practice and reciprocity, and prohibited discriminatory practices under Title XI.

On June 26, 1991, the ASC issued directly to State Agencies "Questions and Answers" covering many of the most frequently asked questions about Title XI, the ASC, and the Agencies' appraisal regulations.⁵ For example, they described the relationships between the ASC, the Appraisal Foundation and the Agencies; described federally related transactions and non-federally related transactions; contrasted temporary practice to reciprocity; and explained certain aspects of the National Registry and the applicability of the Uniform Standards of Professional Appraisal Practice. The "Q&A's" are in Appendix K.

On November 26, 1991, the ASC published in the Federal Register a notice of proposed rulemaking setting out procedures for obtaining temporary waivers under § 1119(b) of Title XI.⁶

⁵See 12 CFR Part 225, Subpart H (Board); Part 34, Subpart C (OCC); Part 564 (OTS); Part 323 (FDIC); and Part 722 (NCUA) (1991).

⁶As amended, § 1119(b) generally enables the ASC to waive, on a temporary basis and with the FFIEC's approval, any State certification or licensing requirement on a written finding that there is a

Appendix L contains a copy of this Notice. Proposed Rules 1102.1 through 1102.7, when adopted, will provide States and other persons with a vehicle to request ASC relief under § 1119(b) and to provide the ASC with credible information that could lead to ASC initiation of § 1119(b) temporary waiver proceedings. The proposed Rules describe the required contents of requests and information submissions, provide meaningful opportunities for public comment, and allow for waiver extensions and terminations. At year-end, the staff was analyzing the public comments received in response to the notice of proposed rulemaking and expects to recommend that the ASC adopt final temporary waiver rules during the first quarter of 1992. The notice of proposed rulemaking also sets out the ASC's policies on how temporary waiver requests and informational submissions will be processed until the proposed rules are adopted in final form. In that regard, the ASC assured the States and other interested persons that it "will accept and consider requests for temporary waiver relief . . . [and] informational submissions respecting the availability of State licensed or certified appraisers in the States."

Also during the last quarter of 1991, the ASC began to develop rules regarding possible ASC actions against States which do not comply with Title XI. Section 1118 of Title XI authorizes the ASC to "disapprove" or "not recognize" appraiser certifications and licenses from States whose appraisal policies, practices or procedures are found to be inconsistent with the Title. In addition, § 1119(c) authorizes the ASC to "take such further action . . . it deems necessary" to follow up State actions against appraisers. During this process, ASC legal staff worked closely with the legal staffs of the Agencies. The ASC expects to publish the rules for public comment in the Federal Register during the first quarter of 1992. The draft rules are in Appendix M.

2. Monitor the requirements established by the Agencies and the RTC with respect to: (A) appraisal standards for federally related transactions under their jurisdictions, and (B) determinations as to which federally related transactions require the services of a State certified appraiser and which federally related transactions require the services of a State licensed appraiser.

During 1991, the deliberations over the threshold level at which appraisals will be required by the Agencies continued, with professional appraisal groups arguing for its elimination or reduction and with financial institutions, particularly banks, asking for increases in the amount. In response to the perceived need and for the sake of uniformity of regulation, the OCC, FDIC, RTC and OTS published in the Federal Register on August 28, September 17, September 18 and December 31, 1991, respectively, proposed amendments to their respective appraisal rules that, among other things, would increase the threshold amount from \$50,000 to \$100,000.⁷ Under the proposals, real estate

scarcity of certified or licensed appraisers leading to substantial delays in the performance of appraisals in connection with federally related transactions.

⁷The NCUA has not proposed such an increase. On July 5, 1990, the Board published in the Federal Register a final rule amendment that increased its threshold amount to \$100,000. See 12 CFR § 225.63. The Board, on November 26, 1991, however, published in the Federal Register a proposal to reduce the threshold amount to \$50,000. The Board has not yet taken any further action on the

related transactions of \$100,000 or less would not require the services of a State certified or licensed appraiser under Title XI. The proposals also contained provisions that would redefine the term "real estate" or "real property" to exclude "mineral rights, timber rights, and growing crops," and would exempt from the appraisal requirement any transaction involving a loan insured or guaranteed by an agency of the federal government, e.g., the Federal Housing Administration, the Department of Veteran Affairs and the Farmers Home Administration, if that loan is supported by a current appraisal that meets the standards of the guaranteeing or insuring federal agency.⁸

The ASC will maintain close contact with the Agencies and the RTC to assure that any revisions to the regulations are consistent with Title XI and will monitor any effect of those changes on the timely implementation of Title XI by the States.

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

Section 1109 of Title XI requires each State Agency to submit to the ASC, no less than annually: (1) a roster listing individuals who have received a State certification or State license; and (2) a registry fee of not more than \$25 from each individual who performs or seeks to perform appraisals in connection with federally related transactions. During the year, the ASC worked hard to create an easy to use computerized Registry data base in time for the expected December 31, 1991 Title XI implementation date. The ASC accomplished this task. During the last quarter of 1991, the ASC completed the purchase and testing of appropriate computer hardware and specially designed software to implement the Registry fully. The software is designed to enable persons who lack computer experience to use it without becoming confused or frustrated, and the software should not require modification by the States, whose computer support for Registry activities ranges from programming support at mainframe data centers to stand-alone personal computer systems.

During December 1991, the ASC prepared and distributed free to each State a packet of items related to the Registry. Included were a diskette containing a software program to facilitate the recording and transmission of Registry data to the ASC; a "User's Guide to the Appraiser Registry System"; and an instructional paper entitled, "Magnetic Tape Specifications for the Appraiser Registry System." In connection with this effort, the ASC issued two Notices to the State Agencies respecting the Registry, which are in Appendix N. This packet will allow the production of uniform rosters, even though the States have diverse automated data processing capabilities.

proposed reduction.

⁸The OTS did not need to propose this latter provision because its regulations already provide for the use of valuations prepared for such loans. 12 CFR §§ 541.13, 541.17, 545.32 and 563.170 (1990). On January 22, 1992, NCUA published for comment in the Federal Register rule proposals respecting the redefinition of real estate or real property and the insured or guaranteed loan exemption. NCUA, however, did not propose changes to its current \$50,000 threshold amount. 12 CFR § 722.3(a)(1).

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

During 1991, the ASC continued its oversight responsibilities of the Appraisal Foundation. The ASC approved two grants to the Foundation in late 1990 for the amounts of \$264,002 and \$649,926, totalling \$913,928, that became final grant documents through the work of ASC staff and HUD administrators during 1991. Under the first grant, Hoffman Associates, a Foundation subcontractor, performed the review and certification of nine proposed appraiser licensing and certification examinations submitted for approval by the States and by private examination providers. Those examinations were approved and were being given in various States for appraiser licensing and certification. The second grant was awarded for the operation of the Foundation's Appraisal Standards and Appraiser Qualifications Boards and, to a limited extent, for the operation of the Foundation's board of trustees. At year-end, the Foundation had drawn down \$646,875⁹ from the total available grant amount of \$913,928, leaving an unspent balance of \$267,053.¹⁰

Responding to the ASC's concerns and perceptions in the appraisal industry about the Foundation's lack of representation of unaffiliated appraisers, the Foundation, in December 1991, adopted amended bylaws and articles of incorporation intended to change significantly the representation of appraisers in the Foundation and on the board of trustees. The bylaws and articles are included in Appendix O. The amended bylaws and articles of incorporation resulted from months of work by a select committee of the board which was given the task of studying ways to improve representation on the board. On November 7, 1991, the Foundation announced that its board of trustees had adopted, in principle, the Select Committee's restructuring plan developed to broaden Foundation representation. The central components of the restructuring plan, as finally adopted, include:

- o Eliminating membership in the Foundation in favor of sponsorship. Appraisal organizations, organizations with an interest in real estate appraisal and real estate related corporations will have the opportunity to become sponsors of the Foundation;
- o Increasing the overall size of the board of trustees from twenty to approximately thirty;
- o Restructuring the Foundation's dues, which will be on a per capita basis with a maximum amount;
- o Removing the limit on the number of appraisal-related organizations which can appoint trustees; and
- o Increasing the number of at-large trustees (a category which must include at least one unaffiliated appraiser) from two to fourteen. The actual number of seats dedicated to

⁹In fiscal year 1991, the ASC disbursed a total of \$462,333 in grant funds to the Foundation. The ASC also provided the Foundation with \$184,542 for the last calendar quarter of 1991. This additional amount reflects invoices for October 1991 of \$64,724 and November and December 1991 in the amount of \$119,818. Calendar year 1991 total disbursements to the Foundation were \$646,875.

¹⁰The ASC has made this balance available to the Foundation during the first calendar quarter of 1992 while it is considering a new Foundation grant request for calendar year 1992.

unaffiliated appraisers will be determined by the number of unaffiliated appraisers who become licensed or certified.

During 1991, the ASC reviewed and often commented on the activities of the AQB and Appraisal Standards Board ("ASB"). The AQB met five times, and it:

- o Finished the qualification criteria for residential and general certification classifications;
- o Reviewed and approved nine appraiser examinations;
- o Continued its work on a Job Task Analysis, which defines appraiser tasks supporting the previously developed Examination Content Outline for General Appraisers;
- o Refined and distributed several Interpretations/Clarifications of the appraiser qualification criteria;
- o Established a task force to explore providing an appraiser educational course evaluation and endorsement service to the States; and
- o Began efforts to facilitate reciprocity among the States.

The ASC likewise reviewed and often commented on ASB activities. The ASB also met five times during 1991, and it:

- o Published four Advisory Opinions on, for example, whether the issuance of update appraisal reports are an acceptable appraisal practice, and whether prior sales of appraised property includes transfers in lieu of foreclosure or foreclosure sales;
- o Issued five Statements on Appraisal Standards concerning, for example, review appraisal, discounted cash flow analysis, and retroactive and prospective value estimates;
- o Approved a new publication schedule for the Uniform Standards of Professional Appraisal Practice;
- o Voted to issue a draft Statement and Advisory Opinion for comment regarding reasonable exposure time for a property and the difference between market value and fair value; and
- o Issued two requests for proposals respecting the development of a curriculum guide for teaching the Uniform Standards.

5. 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 ASC has been carried out during the preceding year.

The first such required report was delivered to the Congress on January 31, 1990, covering calendar year 1989. The second such report was delivered to Congress on January 31, 1991, covering calendar year 1990. This report summarizes ASC activities for calendar year 1991.

6. Other activities of the ASC.

On October 31 and November 1, 1991, the ASC sponsored the Appraisal Subcommittee State Regulators Conference in Washington, D.C. The Conference's program is in Appendix P. The main goal of the Conference was to discuss and clarify, before the anticipated December 31, 1991 full implementation date of Title XI, a number of important issues that were continuing to be a source of confusion to the States. It also was intended to provide a first-time opportunity for persons with common interests in appraisal regulation to establish lines of communication and to exchange ideas on differing approaches to regulatory issues. The Conference was so well received and attended that the ASC is considering whether to make it an annual event. About 250 persons attended the Conference, reflecting the interests of 49 States, appraisers, professional appraiser organizations and federal agencies. During the Conference, the ASC and State regulators presented information on a variety of topics (such as temporary waivers, Title XI compliance and enforcement, and temporary practice and reciprocity) and the Appraisal Foundation provided the attendees with an update of its activities. Congressman Doug Barnard, Jr., was the Conference's keynote speaker and John Robson, Assistant Secretary of the Treasury, spoke to attendees about their role in the current credit availability situation.

In March 1991, the ASC submitted to Congress a Personal Property Appraisal Study pursuant to § 1122(e) of Title XI. The Study's title page and the table of contents are in Appendix Q. The Study concluded that, while it would be feasible to extend to the personal property appraisal function a simple generic regulatory structure similar to Title XI's regulatory structure for real estate appraisals/appraising, such an extension would not be desirable.

Future plans of the ASC

During 1992, the ASC will conduct field monitoring reviews in those States whose systems have been fully implemented, and will continue to perform investigations of complaints as they are received. Between 1992 and 1993, the ASC plans to perform on-site monitoring in all of the States.

The ASC will continue monitoring the activities of the Foundation during 1992. As during 1991, the Foundation will be invited to attend ASC meetings to share information on a regular basis. The ASC will review and evaluate the activities of the Foundation under the grant and will evaluate the results of the changes in organizational structure of the Foundation to insure that they achieve the desired result of making the Foundation a more representative organization.

The ASC will continue to assist the States in their efforts to meet the new January 1, 1993 deadline for full implementation of Title XI. The Temporary Waiver regulations will be in effect and States which anticipate localized shortages will be encouraged to make waiver applications well before the end of the year. In this regard, the ASC may hold a second State Appraisal Regulators Conference in the fall of 1992 to continue the coordination and educational processes initiated during the 1991 Conference.

The ASC believes that most of the systems are in place to insure the successful implementation of Title XI. During this year, we will see most appraisers obtaining licenses and certifications, the

National Registry will grow to contain an estimated 50,000 records of appraisers, a significant number of States will receive on-site monitoring visits, and by December 31st, all of the States (except for a few localized areas) will have implemented Title XI fully.

Sincerely,

Fred D. Finke
Chairman