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Appraisal Subcommittee

Federal Financial Institutions Examination Council

March 24, 2006

Carol J. Leighton, Administrator
Maine Board of Real Estate Appraisers
Department of Professional and Financial Regulation
#35 State House Station
Augusta, ME 04333

Dear Ms. Leighton:

In our February 27, 2006 letter responding to your January 13th letter, we inadvertently failed to respond to your inquiry about the definition of “federally related transaction.” We are sorry for this oversight and are taking this opportunity to answer your question. As you know, the importance of this definition has resurfaced because Maine has a small number of appraisers who hold “transitional” appraiser credentials that do not provide legal authority to perform appraisals in connection with federally related transactions. To address this situation, among other actions, you have instructed the 14 affected appraisers to return their paper credentials and have issued replacement credentials that are over stamped, “Not Eligible to Appraise Federally Related Transactions.”

Section 1121(4) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, (“Title XI”), 12 U.S.C. 3351(4), sets out the definition of “federally related transaction”:

The term “federally related transaction” means any real estate-related financial transaction which —

- (A) a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates; and
- (B) requires the services of an appraiser.

The Federal financial institutions regulatory agencies are defined by Title XI as the Board of Governors of the Federal Reserve Board, the Office of Thrift Supervision, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation (“FDIC”), and the National Credit Union Administration (“Agencies”). The Agencies have adopted almost identical implementing regulations further defining what is, and what is not, a “federally related transaction.” I have attached a copy of the FDIC’s regulations for your convenience. It is important to note that these regulations bind financial institutions, such as federally insured banks, savings and loans, and credit unions – they are not directly binding on State appraiser regulatory agencies or their regulated appraisers, unless those Federal provisions are specifically adopted under State law and incorporated within the State’s appraiser regulatory program.

You attached to your January 13th letter a July 30, 2002 email from Kathryn Gearheard, a former ASC Appraisal Policy Manager. In that email, Ms. Gearheard responded to your inquiry about the meaning of the term “federally related transaction.” The information in that email is essentially correct. It generally provides a summary of how the Agencies define that term under

Title XI and their implementing regulations. We note that Maine's statutory definition of "federally related transaction" also references Office of Management and Budget Circular A-129. This Circular generally applies the requirements of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, ("Title XI") to real property serving as collateral for U.S. Government direct or guaranteed loans. In pertinent part, that Circular states that appraisals of such real property "must be conducted in accordance with the following guidelines:

(1) Agencies should require that all appraisals be consistent with the Uniform Standards of Professional Appraisal Practice, promulgated by the Appraisal Standards Board of the Appraisal Foundation. Agencies shall prescribe additional appraisal standards as appropriate.

(2) Agencies should ensure that a State licensed or certified appraiser prepares an appraisal for all credit transactions over \$100,000 (\$250,000 for business loans). (This does not include loans with no cash out and those transactions where the collateral is not a major factor in the decision to extend credit). Agencies shall determine which of these transactions, because of the size and/or complexity must be performed by a State licensed or certified appraiser. Agencies may also designate direct or guaranteed loan transactions under \$100,000 (\$250,000 for business loans) that require the services of a State licensed or certified appraiser."

As a result of your incorporation of the OMB Circular, Maine has expanded the Title XI definition of "federally related transaction" to include real estate appraisals discussed in that Circular. Note that Maine's definition technically would not include loans purchased by FannieMae, FreddieMac or those real estate transactions insured by the Federal Housing Administration/Department of Housing and Urban Development ("FHA/HUD") even though Fannie and Freddie real estate transactions are "real estate related financial transactions" under Title XI requiring the services of State certified or licensed appraisers, and FHA/HUD transactions also require the services of State certified or licensed appraisers under § 142 of the HUD Reform Act of 1989, 12 U.S.C. 1708(e).

We hope that this letter answers your questions regarding the meaning and application of "federally related transaction." Please contact us if you have further questions.

Sincerely,

Ben Henson
Executive Director