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Appraisal Subcommittee

Federal Financial Institutions Examination Council

July 24, 1998

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Jack Rose, Chair
New York Board of Real Estate Appraisers
NYS Department of State
84 Holland Avenue
Albany, New York 12208-3490

Dear Mr. Rose:

Thank you for your cooperation and your staff's assistance in the June 23-24, 1998 Appraisal Subcommittee ("ASC") review of the New York Real Estate Appraisers Board ("Board") and appraiser regulatory program ("Program").

Our review revealed that New York's Program has significant and numerous shortcomings. At least one of these shortcomings, the failure to adopt and implement the revised Appraiser Qualifications Board ("AQB") qualifications criteria, involves clear violations of Title XI of the Financial Institutions Recovery, Reform, and Enforcement Act of 1989, as amended ("Title XI"). This and other issues, including several longstanding, uncorrected matters, are discussed below. We note that no Board existed for approximately two years prior to 1997, which, in all likelihood, contributed to the current situation. The Board must take prompt action to develop an action plan and to correct the concerns discussed in this letter. We will return in approximately 90 days to review your progress.

- **New York has not adopted the AQB's revised criteria for education and experience that became effective January 1, 1998. As a result, the Board has issued certified general and certified residential credentials to persons who do not meet Title XI's certification requirements.**

In September 1997, New York Licensing staff informed ASC staff that draft legislation to adopt the revised AQB criteria had been forwarded to the Governor's office for review. In December 1997, we notified the Board (with copies to the Governor and the leaders of New York's legislature) of the imminent changes to the AQB's criteria and discussed options available to those States that had not implemented the necessary statutory or regulatory changes. We were told by the Board and Licensing staff that the Governor's office did not support the draft legislation and returned it to the Board for revision and/or further information.

An issue that further complicates New York's ability to conform to the AQB's revised criteria is the Board's use of a "point system" for determining appraiser experience credit. AQB criteria is based on an "hours" system and requires appraisers to obtain the appropriate experience hours (*i.e.*, 2,500 for Certified Residential or 3,000 for Certified General) in not fewer than 24 or 30 months, respectively. New York's point system does not ensure that these criteria are met. During the June 24, 1998 meeting attended by ASC staff, the Board discussed the results of the 1992-93 appraiser audits that indicated the point system was flawed. Appraisers were able to obtain the 240 required points in less than six months, clearly not the AQB's nor the

Board's intent. Our review of your files indicated that some appraisers have reported obtaining 900 to 1600 points over two years.

To resolve the problems associated with New York's failure to implement the AQB's revised criteria on January 1, 1998, the Board must:

1. Take the necessary actions to ensure that New York amends its statute or regulations, as necessary, to adopt the current AQB criteria as quickly as possible;
 2. Ask applicants to voluntarily meet the 1998 AQB criteria pending the amendment to New York's statute or regulations. If an appraiser insists on certification under New York's current statutory provisions, the Board must overstamp the certificate with the words "Not eligible to appraise for Federally Related Transactions";
 3. Correct invalid certifications that have been issued since January 1, 1998. Within 30 days of the receipt of this letter, the Board must:
 - (a) Identify all appraisers who have been newly certified or upgraded to certified status from January 1, 1998, to the present time;
 - (b) Using the 1998 AQB criteria, determine the level of certification or licensure for which each appraiser qualified at the time of application;
 - (c) Using the 1998 AQB criteria, identify those appraisers who did not qualify for the credential level awarded;
 - (d) Notify each affected appraiser and provide the opportunity for the appraiser to document additional experience and/or education qualifications; and
 - (e) After considering the additional documented experience and/or education qualifications, for each appraiser who does not meet the 1998 AQB criteria for his or her current certification, either:
 - Downgrade the appraiser's status to the licensure or certification level specified by AQB criteria; or
 - Overstamp the appraiser's current New York certificate with the words "Not eligible to appraise for Federally Related Transactions"; and
 4. The Board must validate the integrity of its point system for experience credits and document the validation methodology and results.
- **The Board has not addressed several longstanding areas of concern.**

Longstanding deficiencies remain from our previous field review. In addition to New York's failure to implement the revised AQB criteria, these deficiencies include New York's:

1. Collection of National Registry fees from appraisers who were not licensed or certified in accordance with Title XI and, therefore, did not owe Registry fees;

2. Specification in its law of the 1990 version of USPAP with no provision for incorporating updates;
3. Incorrect statutory reference to the AQB as the authority for USPAP and State appraiser regulatory programs;
4. Statutory specification of the appraiser's scope of practice, when this authority lies with the Federal financial institutions regulatory agencies; and
5. Statutory failure to allow certified residential appraisers to perform non-residential appraisals up to \$250,000, while allowing licensed appraisers to do so.

The Board must review our previous correspondence regarding these matters (a copy is enclosed for your convenience) and develop an action plan to resolve each concern. We will review the action plan during our return visit.

- **New York's Program is poorly documented. Numerous administrative processes need to be strengthened to ensure that New York has an effective Program.**

New York's general failure to document Program activities and processes, as discussed later in this letter, warrants special emphasis. We found it extremely difficult to review your Program to determine compliance with Title XI because of incomplete or non-existent record keeping and administrative procedures or processes. New York must develop, as soon as possible, written processes and procedures governing all Program areas to ensure that Program activities are performed adequately and in a manner that facilitates Board and ASC oversight.

- **The Board and Licensing staff do not have an effective system for documenting and tracking the complaint investigation and resolution process. Neither the Board nor anyone else with professional appraisal experience is involved in the investigation process.**

Most, if not all, complaint files reviewed by ASC staff were incomplete. All files contained the case summary sheet prepared by the complaint unit, but rarely contained all of the supporting documentation (*e.g.*, the initial complaint, the respondent's reply, the investigator's report or the final disposition of the case). The complaint unit's notes often indicated that the case was referred to the enforcement division for investigation, but the file did not indicate the investigator's findings or who determined the appropriate method of disposition. We found several instances where the appraiser's failure to respond to the allegations was the basis for considering the case "abandoned" rather than the basis for further pursuit.

A complaint tracking system that is under development shows more than 80 complaints have been received since 1995. The disposition of each complaint indicated in the tracking system, however, is not supported in the complaint files. Files are not consecutively numbered so it is difficult for the Board to determine the number or status of complaints.

Complaints are assigned to a pool of investigators who have no appraisal experience. The Board plays no role in investigating the appraisal process related to the complaints. Licensing

staff has recommended, without success, that a panel of regional appraisal professionals be established to review complaints.

The Board must ensure that the Licensing staff develops a formal, detailed and documented complaint investigation and resolution process using qualified investigators.

- **The course approval process needs improvement. Education files do not contain sufficient documentation to support whether each course meets AQB criteria and the Board’s own requirements.**

Files on education approval included little or no documentation to demonstrate how, why or who approved the courses. The education files only contained the syllabus for the course and the provider’s application. For qualifying education, there was no documentation or notations to support that the course had been reviewed or that the hours requested by the provider were appropriate. Also, the Board has approved a number of continuing education courses that contain no appraisal content.

The Board does not award education credit using the “hours” system recommended by the AQB and followed by other States. The Board requires specific courses for pre-certification education. These courses are equivalent in hours to the AQB criteria. Course content is outlined by the Licensing staff and given to educational providers for designing their courses. The course provider is responsible for developing a course that meets the credit hours requirements. The Board and Licensing staff, however, do not have in place any method of ensuring that the courses, as designed and taught, comply with AQB requirements.

To ensure that education courses taken by New York appraisers meet AQB criteria and are approved by New York, the Board must:

1. Review its list of “approved” courses to ensure that the Board has approved each course;
2. Review each course to ensure that it complies with AQB criteria; and
3. Document the education files to support actions taken on education reviews.

- **The Board’s temporary practice process needs improvement. New York does not appear to process temporary practice applications in a timely manner.**

Documentation of the temporary practice application and approval process was incomplete. There was no indication of the date an application was received, how an application was processed, when an application was approved or denied, or when fees were collected. Documents, such as education certificates, were found unattached to any application in several files. Some documents in the temporary practice files, however, contained some date stamps. Using these, we were able to develop some sense of temporary practice processing times. Many of the applications appeared to take 30 to 60 days to process. ASC Policy Statement 5 identifies as burdensome any processing taking more than five days after receipt of a completed temporary practice application to issue a permit.

The Board must ensure that temporary practice applications are processed in not more than five days from receipt of a completed application in conformance with ASC Policy Statement 5. Additionally, the Board must ensure that temporary practice files are documented sufficiently to support the action taken.

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. As noted earlier in this letter, we plan to return in approximately 90 days to review your progress toward correcting the identified concerns. We will coordinate the timing of the return with your staff.

If you have any questions, please contact us.

Sincerely,

Herbert S. Yolles
Chairperson

Enclosure

cc: Governor George E. Pataki
State Senate Temporary President Joseph L. Bruno
State Assembly Speaker of the House Sheldon Silver
Mr. Bill Stavola, Compliance Officer