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Appraisal Subcommittee

Federal Financial Institutions Examination Council

May 10, 2006

Peter D. Kovach, Prosecuting Attorney
Prosecution Division
Commonwealth of Pennsylvania
Governor's Office of General Counsel
Department of State
Office of Chief Counsel
2601 North 3rd St., P.O. Box 2649
Harrisburg, PA 17105-2649

Subject: *Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs v.*
[DELETION]

Dear Mr. Kovach:

This letter responds to your May 2, 2006 letter, which we received that day via fax. In your letter, the subject parties requested our “opinion/ruling . . . in regard to an issue concerning passing test scores on an appraisal examination.”

More specifically, you asked “whether the ASC would assign a negative inference to the Pennsylvania State Board of Certified Real Estate Appraisers’ (the ‘Appraiser Board’) standards enforcement by determining that the Appraiser Board’s actions would be inconsistent with the policies, practices or procedures under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 . . . [(“Title XI”)] if the Appraiser Board were to allow a certified real estate appraiser to continue to possess her certificate where:

- The appraiser took the national uniform certified residential real estate appraiser examination and was issued a passing score report immediately after completing the examination,
- The Appraiser Board issued a certificate to the appraiser several days later based, in part, on the passing score report, and
- The [appraiser] otherwise complied with the application requirements for certification and recertification,

BUT WHERE

- The testing service has since alleged that the passing score report was issued in error because:
 - The cut score was allegedly set at 75 as far back as 1997,
 - The cut score was allegedly inadvertently set at 70 for the particular test given the [a]ppraiser and others during a 2 ½ month period
 - The [a]ppraiser scored a 72

- The Appraiser Board has not published, by regulation or otherwise, the necessary score to pass the examination,
- At least one other state (Ohio) approved by the ASC references a passing score of 70 on the national uniform residential appraiser examination in its regulations, Ohio Administrative Code Section 13011-11-3-05(G),
- Neither [Title XI], the regulations promulgated there under, nor the criteria set by the Appraiser Qualifications Board ["AQB"] provide for a minimum passing score for the national uniform examination, and
- [Title XI], per Section 3345(e), reserves unto the states discretion as to test qualifications/scores."

Please be advised that the ASC would take exception to a State allowing a certified appraiser to continue to possess his/her certified appraiser credential under the circumstances you described. Following is the rationale for our position.

At the outset, please note that the statement in your last bullet is incorrect. The language of the referenced Title XI section relates only to *licensure* – it has no application to certified appraiser classifications, *i.e.*, the *certified residential* and *certified general* classifications. Also, for the purposes of this letter, we are assuming that the issues involving the testing service are facts and not allegations.

Under Title XI, State appraiser regulatory agencies ("State agencies"), such as the Appraiser Board, must conform to the AQB's certification criteria when qualifying applicants for certified-level appraiser credentials. Applicants must pass the appropriate AQB endorsed or approved uniform certification examination, have the necessary hours of education, and have obtained the needed hours of experience. It is the State agency's responsibility to ensure that applicants for certification meet these three components. Once the State agency issues a certification to an applicant, that certified appraiser then is authorized by the State to perform appraisals in connection with federally related transactions, as defined in Title XI.

In the situation under consideration, the appraiser was issued a certified appraiser credential in error. The State's agent, its testing company, incorrectly applied an incorrect cut score to the examination results, allowing the appraiser to be credentialed. Despite the circumstances involved in the case, the fact remains that the appraiser did not technically pass the appropriate certification examination. Her score failed to meet or exceed the State's (via its contracted examination provider) established cut score. As a result, the examination results are not valid for AQB and Title XI purposes.

In considering this issue, it is important to understand the part that a cut score plays in the examination process. The questions on an individual examination generally are drawn from a bank of possible exam questions. Each of those questions has been assigned a difficulty factor by the exam developer. The combination of the difficulty factors of the selected questions contributes to determining the appropriate cut score for the examination. As a result, it is possible to develop an exam for one State that has a different cut score from the exam provided in another State. Generally, to determine competency, exams with "easier" questions require higher cut scores than exams with more difficult questions. Therefore, the fact that another State might have a cut score that differs from Pennsylvania's cut score is not pertinent to this consideration.

In summary, in the case under consideration, the certified residential appraiser credential was issued in error and is not supported by a successfully completed examination as required by Title XI. The fact that the testing provider erroneously applied an incorrect cut score does not change the fact that the appraiser failed to obtain the score determined by the exam provider to be necessary to demonstrate competency. As a result, the appraiser's credential is not valid under Title XI for federally related transaction purposes.

Because the appraiser in the instant case has not demonstrated the qualifications to hold a certified residential credential, the Appraiser Board must take the necessary remedial actions to correct the situation. Specifically, the Appraiser Board needs to:

- Notify the appraiser that the certified residential credential that she holds is not valid for federally related transactions;
- Provide the appraiser a reasonable time period, not to exceed 60 days from the date of this letter, in which the appraiser may re-take the appropriate examination;
- Based on the examination results, validate or revoke the existing credential; and
- Not later than 60 days from the date of this letter, notify the ASC regarding whether the appraiser has re-taken the examination and whether she successfully completed the examination (using the appropriate cut score).

The appraiser may choose not to re-take the examination. In that case, the Appraiser Board could determine whether State law allows issuing appraiser credentials other than federally-recognized "certified" and "licensed" credentials. Such a credential would be valid for State purposes, but not Federal purposes. Therefore, holders of such credentials would be authorized to perform appraisals only in non-federally related transactions. If permitted, the Appraiser Board could choose to issue such a credential to this appraiser if she chooses not to take the appropriate certification examination.

ASC Policy Statement 8 requires that any State agency issuing this type of credential "must ensure that any potential user of that appraiser's services is aware that the appraiser's certificate or license is limited to performing appraisals in connection with non-federally related transactions. The State agency must place a conspicuous notice directly on the face of any evidence of the appraiser's authority to appraise stating, 'Not Eligible to Appraise Federally Related Transactions.'" Appraisers holding these credentials cannot be included in the National Registry.

Finally, it appears that other appraisers might have been issued certified credentials in error based on the testing service applying an incorrect cut score. Within two weeks of receipt of this letter, the Appraiser Board needs to determine whether other certified residential or certified general appraisers were qualified using the incorrect cut score. Please notify us of the results of this review as soon as the review is completed. If other appraisers received certified credentials as a result of applying an incorrect cut score, the Appraiser Board needs follow the same notification, re-testing, and validation procedures discussed above for these appraisers.

Please contact us if you have further questions.

Sincerely,

Ben Henson
Executive Director