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Appraisal Subcommittee

Federal Financial Institutions Examination Council

April 6, 2007

[DELETION]

Dear Mr. [DELETION]:

This letter responds to your March 5, 2007 letter to Appraisal Subcommittee (“ASC”) General Counsel Marc Weinberg suggesting two changes to Wisconsin’s Department of Regulation and Licensing (“DRL”) enforcement procedures. Specifically, you asked whether DRL’s disciplinary procedures not comply with certain aspects of ASC Policy Statements 1 and 10.

In your letter, you stated that you performed an appraisal in 2002 in an eminent domain taking of farmland for a Wisconsin highway. The condemner was the Wisconsin Department of Transportation. In subsequent legal proceedings, Wisconsin’s Department of Justice represented the Wisconsin Department of Transportation. After several years of litigation, the Department of Transportation settled with your client. The Department of Justice’s appraiser contended that there were no severance damages, and he filed a complaint against you with DRL in November 2005.

First, you asserted that a conflict of interest exists under ASC Policy Statement 1, “when ‘WI Enforcement’ investigates an appraiser in a matter growing out of a ‘WI DOT’ condemnation case where ‘WI DOJ’ settles for higher damages than anticipated.” As noted in your letter, ASC Policy Statement 1, in pertinent part, urges States “to adopt and maintain an organizational structure for appraiser certification, licensing, and supervision that avoids conflicts of interest or the appearance of such conflicts.” When an appraiser performs appraisals in State condemnation proceedings, and the State, through one or more various players in several State entities, has an interest in disciplining the appraiser in connection with those appraisals, those State entities should be separated to ensure the fundamental fairness of the disciplinary proceedings against the appraiser. How this separation is implemented and whether the measures ensuring separation are breached, however, largely is a matter of State law. As such, unless a pattern or practice appears to exist regarding a violation of these protections and requirements, and such violations were likely to affect the functions of a State appraiser regulatory agency adversely, the ASC would not have the authority under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, (“Title XI”) to become involved in that situation.

Next, you noted that a complaint was filed against you on November 29, 2005. You responded to the complaint letter on February 8, 2006. On February 14, 2007, you received the State’s “decision to pursue disciplinary action.” You believe that this time line violates ASC Policy Statement 10, which requires State appraiser regulatory agencies to investigate and resolve complaints in a timely manner. Absent special documented circumstances, complaint processing should be completed within one year of the complaint’s filing date.

The ASC performed its most recent field review of Wisconsin’s appraiser regulatory program in October 2006. The ASC, in its January 7, 2007 field review letter to the State, informed DRL

that its complaint investigation and resolution program failed to comply with ASC Policy Statement 10 E because many complaints were not investigated and resolved in a timely manner. We received DRL's response on March 6, 2007. Both letters are available in the FOIA Reading Room section of our Web site – www.asc.gov.

Please contact us if you have further questions.

Sincerely,

Ben Henson
Executive Director