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Appraisal Subcommittee

Federal Financial Institutions Examination Council

January 5, 2005

Mr. Gregory Syphax, Chairperson
District of Columbia Board of Appraisers
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 7W50
Washington, DC 20002

Dear Mr. Syphax:

Thank you for the cooperation and assistance of the District of Columbia (“District”) Board of Appraisers (“Board”) and the Department of Consumer and Regulatory Affairs (“Department”) during the June 22-24, 2004 Appraisal Subcommittee (“ASC”) review of the District’s appraiser regulatory program (“Program”). As noted in our October 18, 2004 letter to Mayor Anthony Williams, our recent field review identified several serious weaknesses in the District’s Program, including weaknesses that have persisted over the last several years. As a result, the ASC has determined that the District’s Program fails to comply with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (“Title XI”). If the District does not take prompt action to correct these weaknesses, the ASC will initiate a non-recognition proceeding against the District under § 1118 of Title XI, 12 U.S.C. 3347.

In the interest of working with the District to resolve these concerns, ASC staff met with you and other District representatives on November 19th to discuss the District’s most significant Program weaknesses. Other District representatives attending the meeting included Office of Boards and Commissions Director Ronald Collins, Business and Professional Licensing Administration Branch Chief Cheryl Randall-Thomas, and Department Application Officer Clifford Cooks. At the meeting, ASC staff focused on the Board’s failure to meet and carry out its statutory responsibilities due to its inability to attain a quorum and on the Department’s and Board’s failure to investigate and resolve complaints in a timely manner.

We believe that the discussions at the November 19th meeting were positive, and that District representatives are interested in addressing the longstanding Program weaknesses. On that basis, ASC staff recommended to the ASC that a non-recognition proceeding should not be initiated at this time. We will closely monitor the District’s progress towards curing the deficiencies discussed below. ASC staff will return for a follow-up review during the spring of 2005. We also plan to conduct a full field review in December 2005. Our findings at our spring follow-up review will largely determine whether ASC staff will recommend that the ASC initiate a non-recognition proceeding against the District.

- **The Board has been unable to attain a quorum on a regular basis, which has seriously undermined substantive portions of the District's Program.**

For various reasons, the Board has failed to meet and attain a quorum for several extended periods during the past eight years. The Board's failure to achieve a quorum has adversely affected substantive Title XI-related responsibilities, such as complaint investigation and resolution, approval of education courses, and adoption of regulatory changes to implement Appraiser Qualifications Board ("AQB") criteria. We have attached a summary of periods during which the Board failed to achieve a quorum.

During our November 19th meeting, you and the other District representatives described the following three steps that you have taken and/or plan to implement to address this concern:

1. A new Board member has been sworn in, bringing the total number of Board members to three, which is sufficient for a quorum. The Board met on November 10, 2004, its first meeting in six months;
2. In October, Director Collins forwarded two names to the City Council for confirmation to fill the remaining Board vacancies. He anticipates their confirmation by December 31st, allowing a full Board to be seated in January 2005; and
3. To facilitate obtaining quorums in the future, Director Collins stated his intention to seek an amendment to the District's appraiser regulatory statute to change one of the Board positions from being filled by an appraiser to one filled by a licensed realtor or broker. He expects to submit draft language to the City Council by March 31, 2005.

We will monitor the District's success in obtaining approval of the change in Board composition and in the Board's success in achieving a quorum in the future.

- **The District does not investigate and resolve complaints against appraisers in a timely manner.**

Most, if not all, complaints submitted within the past five years are unresolved, and complaint file documentation was incomplete.

The District received 34 complaints between November 1999 and December 2002. Three additional complaints were received between January 2003 and June 2004. Most complaints were filed by lending institutions or Fannie Mae, and were well documented. The Board has not fully investigated and/or resolved most, if not all, of these complaints.

We had difficulty determining the status of many complaints. Board meeting minutes showed that four cases might have been closed. Based on the documentation in the relevant case files, however, the status of those cases was unclear. Moreover, we learned that multiple complaints involving three appraisers were forwarded to the Office of the Attorney General (formerly Corporation Counsel) months ago for the preparation of Findings of Fact, Conclusions of Law, and Orders. Determination of case status was further complicated by Department staff preparing letters referring cases to departments, such as the Office of the Attorney General, for action, but not including those letters in the case files. At the time of our review, the Office of the Attorney General had not reported back to the Board, and the Board had not followed up,

regarding the status of the referred cases. This apparent failure of the Board and the Attorney General's Office to communicate is particularly troublesome because the referred cases appear to involve potential fraud on the part of the appraisers.

The status of outstanding complaints is further confused by a possible blanket dismissal of some cases. During our review, we found that the October 22, 2003 Board meeting minutes contained information indicating that the Board might have issued a blanket dismissal of all cases that had been open for three or more years, and that the Board would act immediately on cases less than three years old. It is unclear whether the Board implemented this resolution. In any event, dismissing a class of cases without considering the substantive allegations of each case would be unacceptable under Title XI.

Investigative reports lacked substance.

Investigators did not independently investigate complaints. Instead, they prepared investigative reports that essentially restated the complaint and the findings of the review appraiser, if a review appraiser was involved. It appears that investigators did not employ appropriate investigative techniques when performing their duties. No apparent effort was made to independently support or refute the assertions of the respondent or the reviewer. It did not appear that investigators consulted listing services or public records and did not interview appropriate individuals to obtain independent information pertaining to the complaint allegations.

Both Title XI and ASC Policy Statement 10 emphasize the District's responsibility to effectively regulate, supervise, and discipline its certified and licensed appraisers. During our November 19th meeting, you agreed to address this deficiency by taking the following actions as soon as possible:

1. The Department will review all complaints (including those that may have been dismissed under the Board resolution discussed above), determine their status, and report that status to the ASC;
 2. The Department, with any needed assistance by Director Collins, will hire outside investigators to address the complaint backlog and to process new complaints, and will provide the funds necessary for hiring those investigators; and
 3. The Department, with the assistance of Director Collins, will contact the Office of the Attorney General to expedite the Office's processing of already referred complaints and to ensure that procedures are in place for prompt processing of future referrals.
- **The District's temporary practice fee is not consistent with ASC Policy Statement 5.**

Under Title XI and ASC Policy Statement 5, temporary practice fees above \$150 are deemed to be excessive and burdensome. Since the previous field review, the District increased its temporary practice fee from \$150 to \$165. During our review, we noted several letters from Promissor, the District's third-party processor, to temporary practice applicants stating that "the correct fee is \$165." Applicants then were required to submit the additional \$15. The District needs to take steps immediately to reduce the temporary practice fee to no more than \$150 per assignment, as required by ASC Policy Statement 5.

- **The District's statutes and/or regulations do not conform to AQB certification criteria changes.**

The District's statutes and/or regulations fail to conform to the AQB's appraiser certification criteria in two ways. First, the District has not yet formally adopted the AQB's January 1, 2003 changes to its certification criteria. While the District is enforcing these changes by informal practice, the District needs to amend its statutes and/or regulations to incorporate these AQB changes. We note that this deficiency was included in our field review letter concerning our December 2002 review of your Program.

Second, as noted in our December 2002 field review, the District's statute and regulations provide for automatic approval of courses offered by sponsors of the Appraisal Foundation. Automatic approval is inappropriate because being a sponsor of the Appraisal Foundation does not, in and of itself, ensure that an education provider's offering meets the AQB criteria's educational requirements. While the District apparently has analyzed each Appraisal Foundation sponsor's course to determine whether the course complies with AQB criteria, the District needs to repeal these provisions to eliminate this apparent conflict between law and practice.

To ensure that any statutory or regulatory amendments comply with Title XI and ASC Policy Statements, we strongly urge you to provide us with copies of those proposed changes. ASC staff will review the drafts and provide guidance regarding Title XI compliance. This guidance should help avoid the potential need for you to go through the legislative or rulemaking process to cure subsequently found problems. Many States seek ASC staff review of proposed legislative and regulatory language to ensure consistency with Title XI. In your response to this letter, please provide a timeline for initiating and completing these statutory and/or regulatory changes.

- **The District experienced problems with automated credential renewals relying on appraiser affidavits for continuing education.**

The District began allowing appraisers to renew credentials via the Internet with its February 28, 2004 biannual renewal cycle. Appraisers choosing to renew online were required to sign an affidavit electronically, attesting to having completed the required hours of continuing education. The appraisers then were required to submit certificates of course completion to Promissor to document that the courses actually were taken.

During our review, we asked Promissor to determine whether all appraisers renewing online provided the necessary certificates of completion for review. Promissor found that 142 of 285 appraisers (50%) failed to provide the supporting certificates.

On July 16, 2004, following our on-site review and at the Department's direction, Promissor sent letters to the 142 appraisers requesting documentation to support their claim of completing the continuing education requirements. The Department informed us that 116 appraisers, about 82%, submitted proof of the necessary continuing education. The remaining 26 appraisers failed to do so. At the Department's direction, we changed those appraisers' status on the National Registry to "Inactive."

We appreciate the District's prompt and effective response to remedy this situation. We note that, beginning January 1, 2005, an amendment to ASC Policy Statement 10 concerning the use of affidavits will become effective. We urge you to review that amendment and take steps to ensure your compliance with its requirements.

Please respond to our findings and recommendations within 60 days from the date of this letter. Until the expiration of that time 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.

If you have any questions, please contact us.

Sincerely,

Virginia M. Gibbs
Chairman

Attachment

cc: Clifford Cooks, Applications Officer
Cheryl Randall-Thomas, Branch Chief
Ronald Collins, Director, Office of Boards and Commissions