

□   □   □   □   □   □

# Appraisal Subcommittee

*Federal Financial Institutions Examination Council*

November 29, 2006

Charles B. Bramlett, Chair  
Charles Clark, Real Estate Commission  
Georgia Real Estate Appraisers Board  
International Tower, Suite 1000  
229 Peachtree Street, NE  
Atlanta, GA 30303-1605

Dear Mssrs. Bramlett and Clark:

Thank you for the Georgia Real Estate Appraisers Board's ("Board") October 20, 2006 letter responding to the Appraisal Subcommittee's ("ASC") September 26, 2006 field review letter. In our letter, we informed you that, based on our July 18-19, 2006 field review of Georgia's appraiser regulatory program ("Program"), Georgia needed to address five concerns to bring the Program into substantial compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended ("Title XI").

At the outset, we need to respond to your statement that, "The most disturbing feature of the ASC's work in the Georgia 'field review' is its express refusal to consider data that we supplied to it before it decided what allegations to make." In general, ASC field review reports and letters reflect the status of State appraiser regulatory program on the date on which ASC staff conducted the field review. This practice is consistent with many other types of reviews and audits conducted by government agencies and auditing firms. Additionally, we acknowledged in two sections of our September 26<sup>th</sup> letter that Commissioner Clark and/or the Board had already begun or completed certain corrective actions and that we were listing the necessary actions for completeness in our report.

- **Georgia issued certified appraiser credentials without ensuring that the applicants' experience was obtained over at least a 24-month or 30-month period as required by Appraiser Qualifications Board ("AQB") criteria.**

As noted in our September 26<sup>th</sup> letter, when we brought this concern to Commissioner Clark's attention during our field review, he immediately began taking corrective steps. In your October 20<sup>th</sup> response, you stated that you had identified every application processed by your vendor since January 1, 2003, and reviewed 465 applications for certified credentials.

- You found that 412 of those applications contained logs that reflected that the applicants met the 24/30 month time frames required by AQB criteria.
- You had to request further information from 53 applicants because their logs did not reflect that their hours were earned over the 24/30 month time period, as the case may be.
- Forty-five of the 53 applicants provided additional documentation to support that their experience was obtained over the appropriate time periods.

- Eight applicants were unable to provide documentation that their experience was gained over the necessary 24/30 month time periods. You stated that the Board had taken appropriate action, disciplinary or otherwise, regarding these appraisers.

We appreciate the Board's prompt, effective action to address this concern.

- **Georgia renewed certified appraiser credentials without ensuring that the applicants had taken the 7-hour National Uniform Standards of Professional Appraisal Practice ("USPAP") Update Course, as required by AQB criteria.**

Effective January 1, 2003, AQB criteria required appraisers to take the 7-hour National USPAP Update Course, or its equivalent, at least every two years as part of their continuing education. To facilitate the transition to this revised continuing education requirement, in calendar years 2003 and 2004, the AQB permitted appraisers to take either the 15-hour National USPAP Course or the 7-hour National USPAP Update Course (or their equivalents) to meet this requirement. The interchangeability of these courses ended on December 31, 2004, when the AQB eliminated the authority to accept the 15-hour National USPAP Course in lieu of the 7-hour National USPAP Update Course.

As discussed in our September 26<sup>th</sup> letter, Georgia continued to allow its appraisers to renew certified credentials supported by the 15-hour National USPAP Course even though renewal of those certified credentials failed to conform to AQB criteria and, therefore, Title XI. The AQB expressly prohibited States from accepting the 15-hour National USPAP Course in lieu of the 7-hour National USPAP Update Course beginning on January 1, 2005.

In your letter, you set forth seven points and concluded that Georgia's acceptance of the 15-hour National USPAP Course in lieu of the 7-hour National USPAP Update Course was appropriate. As a result, Georgia apparently failed to take any steps to resolve this concern.

Under Title XI, the AQB is authorized to promulgate, among other things, the minimum educational requirements for certified appraisers. The AQB's prohibition on accepting the 15-hour National USPAP Course in lieu of the 7-hour National USPAP Update Course must be given its plain meaning. While States generally can adopt higher minimum qualification requirements for appraisers, over and above those adopted by the AQB, that authority fails in the face of clear prohibitory language.

We encourage the Board to reconsider its position regarding this issue and conform to the corrective steps set forth in our September 26<sup>th</sup> letter. While the certified appraiser credentials you have renewed supported by an unacceptable educational course might be compliant with State law, they are not legal for Title XI purposes. Please notify us of what actions the Board plans to take regarding this concern.

- **Georgia's regulatory requirements for reinstating lapsed appraiser credentials are inconsistent with AQB criteria.**

In September 2005, the AQB issued an Interpretation stating that, prior to reactivation, credential holders in "inactive status" must complete all continuing education hours that would have been required if the credential had been "active," including the most recent edition of the 7-

hour National USPAP Update Course, or its equivalent. The Interpretation was amended on May 5, 2006, to allow States to defer the continuing education requirements for up to 180 days for credential holders returning from active military duty.

In our field review letter, we noted that Georgia's regulations at § 539-1-.08(3) do not conform to this Interpretation. That paragraph requires all persons with credentials lapsed for more than two years but less than ten years to pay the required fees and complete "90 classroom hours of approved board education." Under the AQB Interpretation, an appraiser might need more than 90 hours of continuing education to comply with AQB criteria. In addition, paragraph (3) of the regulation does not require an appraiser reinstating a lapsed credential to take the 7-hour National USPAP Update Course, or its equivalent, as required by AQB criteria.

In your response, you stated that the Board's regulation does not relate to "active" and "inactive" appraisers. It refers to persons whose credentials are "lapsed," not "inactive." The AQB does not delineate a distinction between "lapsed" and "inactive." When the AQB adopted the Interpretation in September 2005, the AQB specifically used the term, "inactive status," to mean when an appraiser's credential is placed on "inactive status" on the ASC's National Registry of State Certified and Licensed Real Estate Appraisers ("National Registry"). The AQB, in particular, emphasized that appraisers on "inactive status" do not have the legal authority to perform appraisals in connection with federally related transactions. The reason why an appraiser has been placed on inactive status on the National Registry is not relevant to this issue.

Therefore, to resolve this concern, the Board still needs to revise § 539-1-.08 of its regulations and ensure that it conforms to AQB criteria regarding reactivations of certified credentials.

- **Complaint Investigation and Resolution**

In our September 26<sup>th</sup> letter, we noted that the timeliness of Georgia's complaint investigation and resolution program worsened since our previous field review. The number of complaints outstanding and the number and percentage of complaints outstanding for more than one year increased significantly since our previous field review.

Section 1101 of Title XI states, "The purpose of this title is to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and *whose professional conduct will be subject to effective supervision.*" [Emphasis added.]

An effective and timely complaint investigation and resolution process is a critical element of effective supervision. ASC Policy Statement 10 provides that States should investigate and resolve complaints in a timely manner, with the goal of resolving each complaint within one year of its filing date.

As noted in our September 26<sup>th</sup> letter, during our field review Commissioner Clark acknowledged the situation and informed ASC staff that the Board had already taken steps to address the processing delays. Effective July 1, 2006, the Board's budget authorized the addition

of an investigator to work exclusively on appraiser-related cases. Mr. Clark anticipated hiring the individual by early 2007. Board staff also explained that other administrative and procedural changes were being introduced to better focus staff resources based on areas of expertise.

In your October 20<sup>th</sup> response, you contended that:

- ◆ “ASC ‘Statements’ are not Title XI . . . . [T]hey are not law nor are they the appropriate standard for measuring compliance with Title XI. While the ASC may certainly contend that our regulating is not consistent with its ‘Statements,’ it is incorrect and irresponsible to assert that therefore we do not comply with Title XI”;
- ◆ “The ASC’s ‘Policy Statement 10’ also ignores the difference that a State’s limited resources make in regulating any profession”; and
- ◆ “The ASC’s ‘Policy Statement 10’ also appears to ignore due process rights of appraisers. Title XI does not waive the due process rights of real property appraisers. Thus, ASC “Statements” can not waive an appraiser’s due process rights and should not encourage States to do so . . . . Your staff has also told state regulators that the one year limit applies even if other state agencies and the courts become involved in the prosecution despite the fact that those agencies have other competing priorities.”

The issue of the ASC’s Policy Statements has been addressed in the past. The legal authority and effect of our Policy Statements are well settled. In its February 28, 2000 Decision (File B-2790866.3) relating to the ASC’s National Registry fee policies, the Comptroller General of the United States specifically recognized that:

As the entity responsible for administering this legislation [Title XI], ASC’s interpretation of the statute is entitled to great weight and should ordinarily be followed unless there are strong indications from the legislative history or otherwise that its interpretation is arbitrary or inconsistent with the statutory purpose. *Chevron v. Natural Resources Defense Council, Inc.*, 467 U.S. at 844-845. *See* 58 Comp. Gen. 635, 638 (1979). Having examined the legislative history of 12 U.S.C. § 3338, we found nothing to indicate that ASC’s interpretation of the annual fee requirement is inconsistent with Congress’ intent. Further, ASC’s interpretation appears rational and serves to ensure that appraisers are not listed on the registry for a period in which no fee has been paid.

This finding by the Comptroller General applies with equal weight here. The ASC’s Policy Statements are the ASC’s interpretations of Title XI.

Turning to your second and third points, as a Title XI jurisdiction, Georgia’s responsibilities regarding appraiser-related supervision are unlike any others within State government. These responsibilities are subject to direct Federal regulation and oversight. All responsible State entities, *e.g.*, the Board, the Real Estate Commission, and the Attorney General’s Office, must perform their appraiser regulatory functions in compliance with Federal law, *i.e.*, Title XI, for the State to retain its authority to issue appraiser credentials that convey authority to perform appraisals in connection with federally related transactions.

One of the central purposes of Title XI is to ensure that appraisers who perform appraisals in connection with federally related transactions are competent, that their work conforms to the USPAP, and that their professional conduct is effectively supervised. That purpose must be met.

Georgia must have an effective enforcement program, because enforcement is essential to fulfilling Title XI's purposes.

The ASC adopted Paragraph E of ASC Policy Statement 10 to help ensure that States have effective enforcement programs. The Policy Statement makes clear that each State needs to ensure that its *entire* system for processing and investigating complaints and sanctioning appraisers is administered in an effective manner. Timeliness in resolving complaints is a central aspect of that effectiveness.

Title XI compliance is a State-wide responsibility. If more than one component of State government performs Title XI-related regulatory tasks, each of those components must perform those tasks in a manner consistent with Title XI. If challenges arise, the various State components must work together to find solutions to ensure Title XI compliance. We recognize that Title XI compliance can be complicated by State law structural, administrative, and budgetary difficulties. Nevertheless, Georgia (and any other State facing such difficulties) needs to find ways to ensure compliance. Indeed, because of the direct Federal interest in Georgia's Program, special case processing procedures might need to be implemented – without weakening disciplinary sanctions on licensed or certified appraisers that violate Federal and State law.

Finally, there is nothing in ASC Policy Statement 10, or the ASC's implementation of that Policy, that is inconsistent with appraisers' due process rights under Federal and State law. While States must perform their complaint processing duties on a timely basis, what is timely depends on the circumstances. If special documented circumstances exist, the timely processing of a complaint is not expected to occur within one year of receipt. For example, if a Board decision were appealed within its parent administrative agency for review, that appeal would not constitute a "special documented circumstance." Internal agency procedures, which are within the control of the agency, need to be structured to ensure the timely disposition of complaints. However, if an appeal were heard by a court of law or equity, then that appeal would qualify and the one-year guideline would not apply. Also, the ASC does not evaluate the timeliness of a State's enforcement program based on a single complaint. Rather, we look to the entire enforcement program. As noted in our September 26<sup>th</sup> letter, the number of outstanding complaints and complaints outstanding more than one year increased significantly since our previous field review.

- **Georgia failed to retain adequate documentation to support appraiser credentials and approved education courses.**

In our field review letter, we stated that a number of application files reviewed by ASC staff did not contain the application and supporting information for the most current credential. Also, many education files reviewed did not contain necessary supporting documentation.

In your response letter, you stated that the documentation for the application files was complete, but "[u]nfortunately, it was in two locations." You stated that the documentation now has been merged into a single file. You further stated that the education documentation to support the application files is maintained electronically, not in paper.

Regarding the education course approval files, you noted that Board rules "require schools to retain copies of course descriptions, learning objectives, and other required data." Apparently,

the Board reviews this data in determining whether an education course complies with State and Federal law, but does not retain the documentation. Rather, the Board relies on the education provider to do so.

Our letter to the Board prior to our field review stated, “Please have available for...review **complete files** of all ...approved and disapproved education courses, providers, and instructors.” [Emphasis added.] ASC staff provided a listing of educational courses we planned to review. It was the Board’s responsibility to have the complete files supporting those courses available for review or to notify ASC staff of where the files were located and how the ASC could access those files. We agree that it is not necessary for a State to maintain paper documentation when other reliable options exist. If the Board had informed us of these alternative documentation methods before or during the field review, we would have adapted our field review to accommodate them.

Our field review letter, your response, and any other previous correspondence between us regarding the field review are now public information and will become publicly available on our Web site.

Please contact us if you have any questions.

Sincerely,

Ben Henson  
Executive Director