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Appraisal Subcommittee

Federal Financial Institutions Examination Council

BY FAX and U.S. Mail

February 16, 2007

Mr. Paul Morgan, Chairman
Idaho Real Estate Appraiser Board
1109 Main Street, Suite 220
Boise ID 83702-5642

Dear Mr. Morgan:

Thank you for your December 21, 2006 letter regarding the Appraisal Subcommittee's (ASC) August 15-16, 2006 field review of Idaho's real estate appraiser regulatory program ("Program"). We will address each of the concerns identified during our 2006 field review below. As you may know, Denise Graves of our staff will be performing a follow-up field review of your Program on February 20-21, 2007, to determine your progress in remedying our concerns.

- **Idaho's complaint investigation and resolution program does not comply with Title XI and ASC Policy Statement 10 because complaints are not investigated and resolved in a timely manner.**

In our October 16, 2006 field review letter, we described in detail Idaho's longstanding inability to investigate and resolve complaints on a timely basis as required by Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, ("Title XI") and ASC Policy Statement 10 E.

In your December 21st letter, you stated your belief that "an effective [complaint resolution] program is not solely based upon the resolution of all complaints within a 12 month time frame. Obviously, there are many factors involved in the investigation and resolution of complaints, including the nature of the complaint, the state's resources, and the due process protection and requirements of its licensees. Further, . . . the state of Idaho has established that all administrative services and requirements for the Board [Idaho Real Estate Appraiser Board ("Board")] are provided by the Bureau [Idaho Bureau of Occupational Licenses ("Bureau")]. In essence, [while you recognize your obligation to ensure your Program's compliance with Title XI] the resources of the Bureau are shared with 24 other regulatory bodies which oversee over 50,000 licensees. Simply stated, the state of Idaho has enjoyed a population boom of . . . licensed professionals which have strained the resources of the Board, the Bureau and the state of Idaho."

We agree that solely using a 12-month yardstick to measure your complaint processing program's effectiveness would be inappropriate. The ASC uses a number of tests in ASC Policy Statement 10 E. to ascertain whether a State appraiser regulatory agency's ("State agency") complaint processing program is in compliance with Title XI.

The ASC adopted Paragraph E of ASC Policy Statement 10 to help ensure that States have effective enforcement programs. In that paragraph, the ASC stated 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. The Policy Statement recognizes that fact by requiring State agencies to process complaints of appraiser misconduct or wrongdoing on a timely basis. Idaho has failed to meet this timeliness standard since 1998. As noted in our field review letter, this continued, long-term failure brings into question Idaho's overall inability to supervise its appraisers as contemplated by Title XI.

To help measure timeliness, the ASC placed the following flexible guideline within paragraph E., "Absent special documented circumstances, final State agency administrative decisions regarding complaints should occur within one year of the complaint filing date." In other words, States *should* aim at finally resolving each complaint within one year of its filing dates. Even if a complaint were not resolved within one year of receipt, the State may have "special circumstances" for not doing so. In previous field review letters, the ASC has a number of special circumstances such as: an appeal to an appellate court within a State's judicial system; a State agency holding a case pending the resolution of a criminal case against the respondent arising out of the same circumstances; and the serious illness of the respondent. To qualify as "special circumstances," relevant supporting documentation would have to be in the State agency's enforcement files. This "one-year test," therefore, is a flexible standard by which the ASC measures the State's ability to effectively supervise its appraisers.

Turning to the resource issue, we recognize that Title XI compliance is made more difficult by scarce resources, budgetary constraints, and structural difficulties. And, we appreciate the fact that the Bureau's resources must be allocated among 25 regulatory bodies that supervise over 50,000 licensees, and that Idaho has enjoyed an increase in population and the number of regulated professionals, which has strained the State's resources. As you may know, many States are facing resource limitations, and many are experiencing increases in the number of appraisers.

Nevertheless, Idaho (and any other State facing those difficulties) needs to find ways to ensure Title XI compliance. 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 USPAP, and that their professional conduct is effectively supervised. That purpose must be met, notwithstanding limited State budgetary resources and administrative impediments. Idaho, and all other Title XI jurisdictions, must have an effective complaint resolution program, because effective enforcement is essential to fulfilling Title XI's purposes.

In your letter, you describe several specific steps that the Board and Bureau have taken to address our concerns regarding the State's complaint investigation and resolution program. First, the Bureau restructured Deputy Chief Budd Hetrick's duties, enabling him to allocate more time to the oversight of the investigative division. Second, one Bureau staff member has been reassigned to the investigative division to handle administrative matters, with other staff members providing further assistance on an as needed basis. Third, the Bureau now has a full staff of nine trained investigators. Fourth, the Idaho Attorney General assigned two attorneys to act as the Board and Bureau's prosecutors. Those attorneys are prioritizing the formal administrative actions to concentrate on real estate appraiser cases. Finally, the Bureau will be requesting additional funding from the Legislature during the 2007 session (which began in January). The Bureau intends to apply those funds to file review, legal services, and hiring five additional investigators.

You also stated in your letter that the Board recently has resolved 11 complaints, made recommendations to the Attorney General's Office on 23 complaints, and made further recommendations regarding 28 new complaints apparently arising from your recent continuing education requirements audit.

Today, we received a facsimile from you providing us further information regarding the status of your complaint investigation and resolution program. That facsimile indicated that, as of mid-February, 2007, 141 complaints were outstanding, with 62 (44%) of those complaints being over one year old. At the time of our August 15-16, 2006 field review, 90 complaints were outstanding, with 65 (72%) being over one year old. Moreover, of those 65 aged complaints, one was from 2000, eight were from 2002, 14 were from 2003, 28 were from 2004, and 14 were from 2005. As of mid-February, the following complaints from that field review still remained unresolved: the 2000 complaint; seven from 2002; eight from 2003; 24 from 2004; and 14 from 2005. Between our August field review and mid-February 2007, an additional eight complaints have become more than one year old.

Based on the foregoing, it appears the Bureau and Board have taken important steps towards addressing this longstanding problem. Yet, while the percentage of complaints outstanding for more than a year has been reduced significantly from 72% to 44%, the number and percentage of those complaints still remain unacceptably high.

Finally, as noted in our field review letter, we found that the "Pro-reviewer" program largely was ineffective. Your letter, however, did not address that situation. Please continue to provide us quarterly complaint logs via email to denise@asc.gov.

We will await the completion of the forthcoming follow-up field review to make final determinations regarding this area of concern.

- **The Board and Bureau do not have a reliable means of verifying continuing education claims of appraisers applying to renew certified credentials.**

During our August 2004 field review, we found that Idaho had changed its continuing education and credential renewal cycles from three years to one year, ending on the appraiser's birth date. The Bureau allowed appraisers applying to renew their credentials to submit affidavits attesting to the required hours of continuing education. In our October 12, 2004 field review letter, we notified the Board and Bureau that the affidavit process was not acceptable and detailed the changes needed in the process. After exchanging additional correspondence regarding this concern, the Bureau advised us in an April 29, 2005 letter that the Bureau had revised its continuing education audit policy, and that "[a]udits to insure compliance are now conducted after the licenses are renewed, rather than before."

During the August 2006 field review, we found that the Bureau failed to perform any continuing education audits as required by ASC Policy Statement 10. Bureau staff explained that this failure was inadvertent and occurred because of staff changes and the overall lack of resources in light of its greatly expanded workload.

While ASC staff was on-site, the Bureau randomly selected via computer 53 renewing appraisers (24 certified general, 12 certified residential, and 17 licensed residential) for

continuing education audits. The Bureau sent audit letters to the selected appraisers on August 22nd, with responses required by September 22, 2006.

In the ASC's October 16, 2006 field review letter, the ASC instructed the Bureau and the Board to:

1. Within 15 days from the date of this letter (October 16, 2006), review the education documentation for the 53 appraisers subject to the continuing education audit to determine whether they conform to Appraiser Qualifications Board ("AQB") criteria;
2. Within 30 days from the date of this letter (October 16, 2006), initiate appropriate disciplinary actions against certified appraisers who failed to conform to AQB criteria or failed to respond to the August 22nd audit letter. For certified appraisers who do not meet AQB criteria, immediately begin the necessary steps to downgrade the appraisers to non-certified classifications. Alternatively, the Board could recall existing certifications and conspicuously overstamp them with wording similar to "Not eligible to appraise federally related transactions." In this case, the appraiser's status on the National Registry would be changed from "Active" to "Inactive;"
3. For any appraiser determined not to conform to AQB criteria, determine whether the appraiser failed to conform after making a good faith attempt to conform, or whether the appraiser simply falsified his or her renewal application. Falsifying a government document is a serious offense that calls into question the ethics of the individual. Ethical behavior is critical to appraisal practice. Should the Bureau and Board determine that any appraiser falsified his or her application, the Bureau and Board need to take substantive disciplinary action;
4. The Board and Bureau may take disciplinary action against licensed residential appraisers who failed to conform to AQB criteria or failed to respond to the August 22nd audit letter. Licensed residential appraisers who failed to comply with AQB criteria will have their "AQB Compliant" status on the National Registry changed to "No," and licensed residential appraisers who failed to respond to the audit letter will have that status changed to "Unknown";
5. Within 45 days from the date of this letter (October 16, 2006), provide the ASC with a spreadsheet listing the 53 audited appraisers detailing: the name and credential number of each appraiser; number of documented continuing education hours taken during the continuing education cycle(s); number of hours needed to conform to AQB criteria; status of AQB compliance; the determination of whether an appraiser's failure to conform to AQB criteria resulted from a good faith effort or a falsification of the application; and any enforcement actions taken, or to be taken, against non-complaint appraisers; and
6. Provide the ASC with a detailed description of how the Bureau will validate appraisers' continuing education claims in the future, consistent with ASC Policy Statement 10.

In your letter, you effectively addressed the sixth step. You stated that the Board and Bureau have changed their continuing education audit process by: (1) requiring appraisers applying for renewal to verify by affidavit whether or not they have met the continuing education

requirements; (2) after a renewed credential has been issued, the Board and Bureau randomly auditing ten percent of renewed licensees to verify their education claims.; and (3) if an appraiser has falsified his or her continuing education claim, initiating a disciplinary action against the appraiser.

In addition, we received a facsimile from you today setting out the results of your continuing education audit. You audited the continuing education claims of 54 appraisers (26 certified general appraisers, 13 certified residential appraisers, and 15 licensed appraisers). The 39 audited certified level appraisers represented over 10% of the entire population of renewed certified appraisers. Six certified general appraisers and one certified residential appraiser failed to have sufficient continuing education hours for renewal. As a result, about 18% of the sampled certified level appraisers failed the continuing education audit. This percentage exceeds the 10% threshold stated in ASC Policy Statement 10 F.5.c). As a result, Idaho will need to take remedial action to address this apparent weakness of its affidavit process. Idaho may need to: audit the affidavit submissions of every certified appraiser in the renewing population; abandon the affidavit process; and/or prominently publish the names of appraisers failing the audit to improve deterrence. Regarding the three licensed appraisers that failed the audit, Idaho will need to change their "AQB Compliant" status on the National Registry to "No."

That facsimile also included some disciplinary information regarding the appraisers that failed the continuing education audit. The Board initiated disciplinary actions against six certified general appraisers and three licensed appraisers, and the Board is requiring the one failing certified residential appraiser to provide additional documentation. Apparently, the Board will be asking the nine appraisers who are being disciplined to sign consent orders. We received no information regarding the determination of whether an appraiser's failure to conform to AQB criteria resulted from a good faith effort or a falsification of the application. In addition, you provided no information regarding the specific sanctions being sought against the non-complaint appraisers.

An apparent discrepancy exists between the numbers of appraisers being disciplined for the failure to have sufficient continuing education. As noted above, you stated in your letter that the Board "made additional recommendations to the Attorney General's Office on 28 complaints involving the continuing education requirements. Yet, in the facsimile, you stated that the Board was initiating disciplinary actions against nine appraisers.

Finally, you failed to provide the ASC with a detailed description of how the Bureau will validate appraisers' continuing education claims in the future, consistent with ASC Policy Statement 10.

We will await the completion of the forthcoming follow-up field review to make final determinations regarding this area of concern.

- **Idaho's regulations allow for approval of continuing education courses that do not meet AQB criteria.**

As noted in our field review letter, Board rules allow the 15-hour National USPAP Course to be equivalent to the 7-hour National USPAP Update Course for continuing education purposes. Effective January 1, 2005, the AQB issued an Interpretation to the criteria that no longer allowed the 15-hour National USPAP Course to be considered equivalent to the 7-hour National USPAP

Update Course. While we determined on site that the Board and Bureau had not accepted the 15-hour course as equivalent to the 7-hour update course, Bureau staff and the Board Chairman, with the assistance of ASC staff, drafted changes to the Board's regulations to ensure that only the 7-hour National USPAP Update course, or its equivalent, would be accepted for continuing education purposes.

In your letter, you stated that the Board approved those rule changes, and that they should be reviewed and approved by the appropriate legislative committees during the next legislative session beginning in January 2007. Please keep ASC staff informed about the status of the rule changes.

- **Idaho does not report disciplinary actions to the ASC for inclusion on the National Registry.**

As noted in our field review letter, Idaho failed to report disciplinary actions to the ASC as required by ASC Policy Statement 9A. During the field review, the Bureau Chief instructed Bureau staff to email all disciplinary actions to the ASC immediately after each Board meeting. In your letter, you acknowledged that this reporting failure was an oversight, and that Bureau staff would be reporting disciplinary actions to the ASC via email immediately after each Board meeting. We note that, since our field review, Bureau staff has been promptly reporting disciplinary actions to us.

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

Please contact us if you have further questions.

Sincerely,

Ben Henson
Executive Director

cc: Tana Cory, Bureau Chief
Budd Hetrick, Deputy Bureau Chief