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Appraisal Subcommittee

Federal Financial Institutions Examination Council

August 22, 2005

James Pfeffer, Chairman
Kansas Real Estate Appraisal Board
1100 SW Wanamaker Road, Ste. 104
Topeka, KS 66604

Dear Mr. Pfeffer:

Thank you for your June 28, 2005 letter responding to our May 16, 2005 field review letter. As stated in that letter, our field review identified several weaknesses in Kansas' appraiser regulatory program ("Program"). While we are pleased that the Kansas Real Estate Appraisal Board ("KREAB") has made efforts to address several of our concerns, we remain troubled by other aspects of your response, as discussed below.

- **Kansas issued certified appraiser credentials supported by examination results that were more than two years old, which is inconsistent with Appraiser Qualifications Board ("AQB") criteria.**

Section 58-4109(f) of Kansas' appraiser regulatory statute ("Statute") provides that appraiser examination results are valid for five years. In April 2000, the AQB issued an Interpretation to its criteria specifying that examination results were not valid for more than two years, and made it effective on July 1, 2000. The AQB notified Kansas, and all the other States, about this requirement in an April 28, 2000 letter. As a result, Kansas knew about this Interpretation before its effective date. Also, the ASC notified Kansas, and all other States, in a May 22, 2000 letter about the AQB's adoption of the Interpretation, its impending effective date, and the need for States to conform their operations to the Interpretation. Finally, the Interpretation was included in each issue of the AQB's Real Property Appraiser Qualifications Criteria and Interpretations of the Criteria since July 2000. Kansas nevertheless failed to take appropriate action to conform its examination practices regarding certified appraisers to the Interpretation as required by Federal law, *i.e.*, Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, ("Title XI").

In your June 28th letter, you pointed out that we failed to cite this conflict in our March 25, 2002 field review letter. You stated that, if we had cited the conflict at that time, that the problem would have been corrected, and the four certified appraisers who have been adversely affected would not have been placed in that position.

While we acknowledge that we erred when we did not cite the conflict in our March 2002 field review letter, that error does not excuse Kansas from conforming to Title XI as implemented by the AQB's certification criteria. Kansas is responsible for complying with Title XI regardless of whether the ASC identifies and cites a conflict between State law and Title XI. Additionally, both the ASC and the AQB had provided written notice to all States regarding the AQB's adoption of the Interpretation and the States' need to conform to that Interpretation.

You also assert that KREAB “has no legal basis to withdraw or revoke [affected appraisers’] certificates which were granted in accordance with Kansas law in effect at the time they were issued.”

While the certifications in question might have been issued in compliance with State law, those certifications do not comply with Federal law (*i.e.*, Title XI). Therefore, those certifications cannot authorize the holders to be legally eligible to perform appraisals in connection with federally related transactions. Kansas has two options for addressing these certifications:

1. Require the affected appraisers to take and pass an examination that meets AQB criteria to retain their legal eligibility to perform appraisals in connection with federally related transactions, and take appropriate actions against any appraiser who fails to do so; or
2. Recall the certifications and overstamp the credentials with prominent wording similar to “Not Eligible to Appraise Federally Related Transactions.”

In your letter, you requested that the ASC waive the examination requirement for the four affected appraisers. These appraisers took and passed their qualifying certified examinations in July 1998, May 1999, June 1999, and June 2000, and were issued certifications in April 2001, January 2004, March 2004, and May 2003, respectively. We understand from conversations with KREAB staff that the waiver request is based on the fact that these appraisers took the examinations before the July 1, 2000 effective date of the Interpretation. We cannot grant your request. As discussed above, KREAB was informed of the Interpretation and its impending effective date and should have advised the appraisers of those facts. Failing compliance by the applicants, KREAB should have withheld certification issuance.

To address this concern, KREAB must take the actions specified in our May 16, 2005 letter. Please notify us of the actions taken by KREAB and any resulting actions taken by the appraisers. Also, to fulfill our Title XI responsibility to maintain a National Registry of appraisers who are legally eligible to perform appraisals in conjunction with federally related transactions, on September 1, 2005, we will change the National Registry “AQB Compliant” status of these four certified appraisers to “No.” We will maintain this status until such time as KREAB informs us of its decisions and subsequent actions. We will change each appraiser’s status as we are provided supporting documentation by KREAB.

Notwithstanding the foregoing discussion, we are pleased to learn that Kansas has taken appropriate action to remedy this conflict with Federal law. Senate Bill 276, which was recently passed by the Kansas Legislature, removes this conflict and brings this aspect of Kansas’ Program into compliance with AQB criteria and Title XI. We understand that the new law became effective on July 1, 2005, and that temporary implementing regulations have been adopted. We further understand that KREAB is in the process of adopting permanent implementing regulations.

- **Board regulations provide appraiser members of the Board credit for up to 14 hours of continuing education per year for Board participation.**

Section 117-6-1(c)(3) of Kansas’ rules and regulations provides that Board members who actively serve on KREAB may receive 14 hours of appraiser continuing education annually. In

response to an ASC request, the AQB, in an August 4, 2004 letter, stated that a State may award continuing education credit to appraisers who attend a State board meeting under the following circumstances:

- The State board meeting must be at least two-hours long (this is consistent with the requirement that continuing education courses must be a minimum two-hours in length);
- A credentialed appraiser may not receive continuing education credit for attending a State board meeting more than once per continuing education cycle (this is consistent with the requirement that continuing education is designed to maintain and advance an appraiser's skills, knowledge and competency, and should not be repetitive or redundant); and
- The State board must verify the identification of any credentialed appraiser wishing to receive credit for attending a State board meeting, and must have adequate procedures in place to ensure the credentialed appraiser attends the meeting for the required period of time.

In your letter, you indicated that KREAB would continue to award Board member appraisers continuing education credit for Board meetings. You then described the verification form KREAB plans to use to prove member attendance and meeting lengths. The format suggested is consistent with those used by traditional course offerings and conferences.

We remind you that, for an appraiser holding a certified appraiser credential to be legally eligible to perform appraisals in connection with federally related transactions, that certification must comply with Title XI, including applicable AQB criteria. We must stress that KREAB members may only receive credit for one meeting per continuing education cycle, under current AQB interpretations. The AQB has issued for comment an exposure draft of a criteria interpretation regarding this issue. You should be aware that the exposure draft tracks very closely with the AQB position expressed in its August 4, 2004 letter. KREAB needs to take immediate steps to amend its regulations to conform to the direction provided by the AQB. Further, KREAB must ensure that certified credentials renewed after the June 30, 2005 renewal cycle conform to these provisions. Certified credentials issued after the June 30, 2005 renewal cycle that do not conform to this AQB provision will not convey authority to perform appraisals in connection with federally related transactions.

- **The Board needs to update its regulations to reflect changes in AQB criteria.**

KREAB needs to amend its regulations to reflect two changes in AQB criteria. Effective January 1, 1998, the AQB eliminated acceptance of teaching from the list of activities acceptable as qualifying experience. And, effective April 1, 2004, the AQB removed ACE Credit from its authorized distance education approval process and added the International Distance Education Certification Center. In practice, Kansas has not accepted teaching as experience or accepted ACE Credit-approved distance education courses. Nevertheless, KREAB needs to adopt these housekeeping amendments to its regulations.

You indicated that you will eliminate references to ACE Credit and the allowance of experience credit for teaching in the regulations. Please provide us a copy of the regulations, when adopted.

- **Board Counsel must allow ASC staff to observe non-public sessions of the Board.**

During the KREAB meeting attended by ASC staff, KREAB entered into a non-public session. Prior to convening this session, Assistant Attorney General Nohe instructed all observers to leave. She included ASC Policy Managers, KREAB's prosecuting attorney, and KREAB staff. We advised KREAB and Ms. Nohe of our authority to observe the proceedings as part of our State oversight responsibilities under Title XI. After Ms. Nohe instructed ASC staff to leave the meeting, our staff noted their protest and left the meeting.

In your response, you stated that KREAB will allow ASC staff to attend executive sessions of KREAB meetings, but will continue to bar ASC staff from observing "quasi-judicial deliberations." We have received a June 28, 2005 letter from Ms. Nohe supporting your position. We will respond to Ms. Nohe's letter separately.

Again, thank you for your response and your efforts to address our concerns. Please respond to this letter within 30 days from its receipt. Please contact us if you have further questions.

Sincerely,

Ben Henson
Executive Director