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# Appraisal Subcommittee

*Federal Financial Institutions Examination Council*

August 22, 2001

Keith Schrimsher, Chair  
New Mexico Real Estate Appraisers Board  
P. O. Box 25101  
Santa Fe, NM 87504

Dear Mr. Schrimsher:

Thank you for your cooperation and your staff's assistance in the June 27-29, 2001 Appraisal Subcommittee ("ASC") review of the New Mexico Real Estate Appraisers Board ("Board") and appraiser regulatory program ("Program").

Our review revealed serious weaknesses in New Mexico's Program. Most of these weaknesses did not exist at the time of our April 1998 field review. We are concerned that the quality of the Program has declined so quickly that New Mexico is not fulfilling its responsibilities under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended ("Title XI").

- **Program staffing**

A loss of staffing resources and frequent changes in staff allocated by the Regulation and Licensing Department ("Department") appear to be primary factors in the deteriorated quality of the Program. Only the Board Administrator is providing support to the Board, and that support is not full time. We understand that a gubernatorial initiative prompted legislation that established sunset provisions for all New Mexico boards and commissions, effective July 1, 2000. This initiative and legislation prompted the Department to leave support positions vacant, except for occasional temporary or summer student staffing. That sunset provision has been extended until 2006.

The Board and the Department must provide adequate staffing for the appraiser regulatory program to fulfill its responsibilities under Title XI. During the June 29<sup>th</sup> meeting of ASC Executive Director Ben Henson and Appraisal Policy Manager Vicki Ledbetter and you and other representatives of the Board and Department, the Department's Director committed to provide the necessary staff resources. Please notify us of what actions have been taken, or are being taken, to ensure that necessary staffing resources are being allocated to the Program.

- **Appraiser credential (license and certificate) overstepping**

As a result of our 1998 field review, New Mexico overstepped all appraiser credentials with a notice of whether or not the appraiser is eligible to appraise property for federally related transactions. The overstepping was necessary because New Mexico offers its appraisers the option to pay or not pay the National Registry fee. A provision was added to section 61-30-14(c) of New Mexico's appraiser statute requiring each licensing document to include "notice of whether the licensed or certified appraiser has paid the federal registry fee...". Effective January 1, 1999, the Board sent a notice to all New Mexico financial institutions explaining the federally

related transaction option, and a notice that appraiser credentials were not valid unless they contained a notice regarding the appraiser's eligibility.

This procedure appears to have been followed until mid-2000, when the notice regarding eligibility was dropped, apparently inadvertently, for appraisers choosing not to be included on the National Registry. The timing of this change appears to coincide with the time the Department implemented changes to its computer system. As a result, most credentials now do not meet the overstepping requirements or State law.

As further discussed in the next section of this letter, the Board must recall, appropriately overstamp, and reissue all licenses and certificates that do not contain the appropriate overstamp indicating an appraiser's eligibility to appraise for federally related transactions. If New Mexico cannot resolve this concern promptly, the ASC might need to place a notice on its Web site notifying lenders and the public that New Mexico's indication of an appraiser's eligibility to appraise for federally related transactions is not reliable. Additionally, the federal financial institution regulatory agencies might determine it necessary to notify their regulated financial institutions.

- **New Mexico is submitting inaccurate data to the ASC for inclusion in the National Registry.**

Complicating the situation described above, we found evidence that appraisers who should be on the Registry are not. Further, we also identified appraisers on the Registry for whom New Mexico has not received a Registry fee, although New Mexico has remitted a Registry fee to the ASC. Moreover, a comparison between a roster of active appraisers provided by the Department and a Registry-generated roster revealed that only half of the appraisers licensed or certified by the State are on the Registry. These numbers are unusually low, particularly for certified levels.

Many appraiser files reviewed by ASC staff did not contain the appraiser's response as to whether he or she wanted to be placed on the Registry. Based on discussions with Department staff members, staff's data input errors are due to unfamiliarity with the new computer system and personnel turnover. As a result, the computer system does not properly reflect the appraisers' option of whether to be placed on the National Registry.

To address the overstepping and Registry issues, New Mexico must perform a complete review of all application files. Within 90 days of receiving this letter, the Board and Department staff must:

1. Review all appraiser files to determine which files are missing Registry option forms;
2. Obtain a written declaration from necessary appraisers as to their desire to be or not to be included on the Registry;
3. Ensure that necessary appraisers are reissued licensing credentials containing the appropriate disclosure regarding their eligibility to appraise for federally related transactions;
4. Make certain that the Department's computer system accurately reflects each appraiser's choice regarding the Registry;
5. Prepare an accurate data file of appraisers opting to be on the Registry and submit the file to the ASC; and
6. Notify lenders and other identified users of appraisal services of the failure to include the notice on all credentials, and that credentials are being reissued.

- **Complaint investigation, resolution, and tracking**

The Department does not have an effective system for tracking and monitoring the status of complaints. Almost all cases took longer than a year to resolve, and many took longer than two years. ASC Policy Statement 10 encourages States to resolve complaints within one year. Not only is New Mexico not meeting this policy, but more seriously in many respects, the Board and Department are not meeting New Mexico's Uniform Licensing Act provisions that require case resolution within two years. As a result, we found that the Department closed several potentially serious cases due to the expiration of the statute of limitations.

Our review of more than 20 cases revealed significant time lags between staff actions. For example, a previous Administrator would solicit a response from the respondent but not follow-up to ensure a reply was received until the complainant asked for a status report, several months later. Similarly, a response would be received from the respondent, but an investigation would not begin until after the respondent or complainant inquired as to the status of the complaint, again several months later. Board decisions documented in the Board minutes were not carried out, resulting in cases that remained open and, in some cases, were closed due to the expiration of the statute of limitations.

Further, it does not appear that the Administrator or the Board liaison verifies, as part of the complaint review process, whether the appraiser was eligible to appraise the property in question. This is an important aspect of the review process because State law permits appraisers to waive their eligibility to provide appraisal services in federally related transactions. To ensure compliance, all complaints received should be screened to determine if the appraisal or appraisals in question were part of a federally related transaction. This should be compared to the appraiser's license to determine whether the appraiser was working within his or her scope of practice.

Additionally, sanctions imposed by the Board were not reported to the ASC for inclusion on the National Registry. ASC Policy Statement 9 directs States to report expeditiously to the ASC any disciplinary action taken against an appraiser. Information on such actions must be submitted at least monthly. The policy encourages States to report serious disciplinary actions, such as suspensions or revocations, immediately. Yet, during our review, we identified one revocation that was not submitted for inclusion on the National Registry.

Within 90 days of receiving this letter, the Department and Board must develop and implement an effective complaint investigation and resolution process that:

1. Establishes steps for the complaint process;
2. Identifies timeframes within which each step should be completed;
3. Requires staff to determine whether the appraiser was working within his or her scope of practice regarding federally related transactions;
4. Creates a computerized system to log and track the status of all complaints filed with the Board;
5. Generates reports that are distributed to the Board at each meeting; and
6. Provides information on all disciplinary actions taken by the Board to the ASC on a monthly or more frequent basis, as provided in ASC Policy Statement 9.

- **Distance education courses**

The Board recently approved seven distance education courses that are inconsistent with Appraiser Qualifications Board (“AQB”) criteria. These criteria require distance education courses to be:

1. Offered by an accredited college or university;
2. Accepted for college credit through the American Council on Education’s College Credit Recommendation Service ACE/CREDIT (formerly the ACE/PONSI program); or
3. Approved through the AQB Course Approval Program.

The Board must rescind its approval of the distance education courses identified by ASC staff to your Administrator during our on-site visit. Further, the Board needs to incorporate the AQB’s distance education criteria in its course approval program.

- **Continuing education verification**

On January 1, 1998, New Mexico began accepting affidavits that permit renewing appraisers to attest to having obtained the necessary hours of continuing education, but neither the Board nor the Department validates these assertions. The continuing education course verification form used by renewing appraisers authorizes the Board to request copies of course completion certificates, but the Board has not done so.

Under Title XI and ASC Policy Statement 10B, States need a reliable means to validate applicants’ education credit. The lack of a valid verification program is both an invitation to potential fraud and a threat to the integrity of the State’s appraiser regulatory program. Therefore, New Mexico needs to establish an acceptable validation process. If the Board continues to accept affidavits, it needs to implement a random audit procedure, or other method, to validate a percentage of affidavits.

- **Temporary practice extension**

New Mexico’s statute and regulations regarding temporary practice do not allow for an extension as required by ASC Policy Statement 5. The Board must initiate the necessary actions to make its statute, regulations, and practice consistent with Policy Statement 5.

- **New Mexico’s appraiser-related statute and regulations need “housekeeping” clarifications.**

New Mexico’s statute and regulations contain several references that are inaccurate, unclear, and/or conflicting. Our staff discussed several examples with you during our review and at your June 29<sup>th</sup> Board meeting. When time permits, the Board needs to initiate review and correction of these items. As always, we are available to assist you in such a review.

Due to the serious nature and the extent of our concerns over New Mexico’s ability to carry out its Title XI responsibilities, we will return for a follow-up review within the next six to nine months. At that time, we will review all file material discussed above and measure the State’s progress in resolving each of these items.

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

Thomas E. Watson, Jr.  
Chairman

cc: Director, Regulation and Licensing Department