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Appraisal Subcommittee

Federal Financial Institutions Examination Council

July 19, 2006

Mr. Basil Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Department of State
P.O. Box 2649
Harrisburg, PA 17105-2649

Dear Mr. Merenda:

Thank you for the Bureau of Professional and Occupational Affairs' ("Bureau") cooperation and assistance during the June 7-8, 2006 Appraisal Subcommittee ("ASC") review of Pennsylvania's appraiser regulatory program ("Program"). Based on our review, Pennsylvania needs to address three 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").

Two of the concerns are particularly significant because they were identified and communicated to the Bureau following our June 2000 and April 2003 field reviews. Neither concern has been resolved fully. One area involves the State's complaint investigation and resolution program; the other involves regulatory inconsistencies with Appraiser Qualifications Board ("AQB") Criteria. The third concern regards Pennsylvania's failure to remit National Registry fees to the ASC in a timely manner.

- **Pennsylvania'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 2000 field review letter, we stated that Pennsylvania's complaint investigation and resolution program was very time consuming and logistically unwieldy. At that time, we noted that, between 1992 and 1997, over 40% of the 291 resolved cases took more than one year to resolve, while at least 20% of the cases took more than two years. Twenty-four cases took three to six years to resolve.

Following our 2000 and 2003 field reviews, the Bureau made several changes to its complaint investigation and resolution processes. These changes appear to have had some beneficial effects. For example, the Bureau has been able to reduce the percentage of complaints outstanding for more than one year from 68% in April 2003, to 36% in June 2006, even though the number of complaints received increased during that period.

Nevertheless, many complaints still are not investigated and resolved in a timely manner. While the percentage of complaints unresolved for more than one year decreased from 68% to 36%, this ratio remains unacceptably high. Of the 120 complaints outstanding for more than one year at the time of our review, 30 were open for more than two years; six were open more than three years; and one had been open for more than four years. Title XI requires States to adequately supervise their certified and licensed appraisers. An effective complaint investigation

and resolution program is a key component in effective supervision. Failure to investigate and resolve complaints in a timely manner indicates that Pennsylvania fails to effectively supervise its appraisers. The Bureau and Board must determine how to address this longstanding weakness.

At a minimum, the Bureau and Board need to focus on two specific areas: an apparent lack of staff resources and the operation of the expert reviewer process. In the first area, only one attorney is responsible for monitoring and prosecuting appraiser-related cases and negotiating settlement agreements. That attorney also supervises the activities of other attorneys working for other regulatory boards and programs. It appears that he does not have and/or devote sufficient time to handle his appraiser-related responsibilities on a timely basis. The legal office needs to dedicate the necessary resources to ensure that appraiser-related cases are processed in a timely manner.

Additionally, the expert reviewer process appears to have several weaknesses. The Bureau contracts with 23 certified appraisers to review appraisal reports from appraisers named in complaints. These contracts allow reviewers 120 days to deliver a written report. This 120-day period is unnecessarily long. Based on our observations of other States using similar contract appraisers, 60-90 days should be adequate time for a responsive appraiser to deliver a written report.

To complicate this issue, the Bureau does not enforce the 120-day delivery time. In many cases, reviewers failed to deliver reports within the specified period. Several reviewers took more than one year to complete their reports, with one report taking more than two years.

In addition, while Bureau staff determines which cases merit expert reviews, the reviewers choose which cases they will review. Allowing reviewers to pick and choose among the cases to be reviewed contributes to significant processing delays. When Bureau staff periodically sends reviewers a list of appraisal reports for review, many appraisal reports are not chosen for review and remain on the list unassigned. For example, the list reviewed by ASC staff contained 73 appraisal reports needing expert review. The reviewers only chose to review 29 of these appraisal reports. The other 44 appraisal reports were not assigned for review and were carried over to the next list for circulation to the reviewers. Other States have used reviewers effectively by assigning cases to reviewers based on the case and the reviewer's expertise.

To address this concern, the Board and Bureau need to:

1. Comply with ASC Policy Statement 10 E.'s requirement that the State must investigate and resolve complaints in a timely manner, and that complaint resolution generally should occur within one year of complaint receipt;
2. Provide the ASC with a specific plan to reduce its backlog of outstanding cases and to ensure the timely processing of future complaints, consistent with ASC Policy Statement 10. E. That plan, in particular, needs to address the lack of staff resources dedicated to the appraiser regulatory function and the weaknesses in the expert reviewer process; and
3. Provide a complaint log to the ASC on a quarterly basis.

Finally, we are aware that Pennsylvania has been experiencing a high incidence of mortgage fraud, property flipping, and similar abusive practices. As noted above, the number of appraiser-related complaints has increased dramatically in the last three years. While this increase might be attributable to several factors, the higher incidence of mortgage fraud in your State could play a role in that increase. To help ensure that appraisers participating in such schemes are identified and disciplined accordingly, the State needs to scrutinize complaints closely to determine whether mortgage fraud may be involved, and, if so, to prioritize the processing of such complaints.

- **Board rules contain inconsistencies with Appraiser Qualifications Board (“AQB”) criteria.**

Board rules authorize the Board to accept distance education courses that are consistent with AQB certification criteria. The rules, however, fail to state that distance education courses must be conducted by an accredited college or university, approved by the International Distance Education Certification Center (“IDECC”), or approved through the AQB Course Approval Program, as required by AQB criteria. Nevertheless, the Board, in practice, only has approved distance education courses meeting these AQB requirements.

Board rules also allow work experience credit to be granted for up to 300 hours of teaching experience. This, too, is inconsistent with the AQB’s certification criteria. Once again, even though the rules permit such credit, the Board has not accepted any experience of this nature.

We addressed this concern in our August 15, 2000 and May 21, 2003 field review letters. During our 2000 field review, the Board informed us that it was drafting revised regulations to cure these concerns. The Board made the same representation during our May 2003 field review. To date, the regulations have not been revised.

Recently, it appears that the Board made some progress. On May 26, 2006, the Bureau filed for public inspection a Proposed Rulemaking addressing our concerns and other amendments to implement the 2008 AQB criteria changes. During the June 8th Board meeting, ASC staff provided the Board with preliminary comments on proposals and offered ASC staff assistance in moving the proposals forward. As a result, the Board and Bureau requested our comments regarding the proposed rules. On June 19, 2006, ASC staff sent a letter to the Board’s Counsel, commenting on the proposals and urging their prompt adoption.

The Bureau and Board need to continue their efforts to ensure the prompt adoption of these proposed rules to cure this longstanding concern. Please continue to update us on the status of the proposals as they move through the rule adoption process.

- **The Bureau often fails to remit National Registry fees in a timely manner.**

While Pennsylvania submits National Registry data monthly, the State has a long history of failing to remit the associated fees in a timely manner. These delays have caused a lag in our processing Pennsylvania data files, with many appraiser records not being updated in a timely manner. The ASC does not process data submissions without receipt of related Registry fees. As a result, appraisers have complained to the State and the ASC about detrimental effects on their

businesses when extended delays in remitting fees have caused the ASC not to process the State's data files and update the Registry.

Several factors have contributed to the delays in remitting fees. The primary factor appears to be Pennsylvania's complicated invoice review and payment authorization processes. During the field review, Bureau staff discussed the problems concerning timely remittance of Registry fees. The Commissioner proposed that Bureau staff work with the processing supervisors and managers to devise a system to expedite National Registry payments.

To address these payment delays, the Bureau needs to follow through with its proposal to contact financial processing supervisors and managers to devise a system to expedite Registry payments. ASC staff is available to share the processes and efficiencies that we have observed in other States. Please keep us informed about the status of those discussions and the resulting plan to expedite registry fee payments.

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

Please contact us if you have any questions.

Sincerely,

Virginia M. Gibbs
Chairman

cc: Robert F. McCrae, Chairman, State Board of Certified Real Estate Appraisers
Michelle Smey, Board Administrator