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Appraisal Subcommittee

Federal Financial Institutions Examination Council

June 27, 2007

Mr. Thomas Andolfo, Chair
Rhode Island Real Estate Appraisers Board
Mr. Michael Marques, Director
Department of Business Regulation
223 Richmond Street, Suite 230
Providence, RI 02903-4230

Dear Mr. Andolfo and Mr. Marques:

Thank you for the cooperation and assistance of the Rhode Island Real Estate Appraisers Board (“Board”), the Department of Business Regulation (“Department”), and the Division of Commercial Licensing & Regulation (“Division”) in the April 3-4, 2007 Appraisal Subcommittee (“ASC”) review of Rhode Island’s real estate appraiser regulatory program (“Program”).

Based on our review, we find that Rhode Island’s Program fails to comply with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (“Title XI”). As discussed below, the State failed to: (1) investigate and resolve complaints in a timely manner and maintain related documentation; (2) implement temporary practice procedures that conform to Title XI and ASC Policy Statement 5; (3) ensure that continuing education courses comply with Appraiser Qualifications Board (“AQB”) criteria; (4) amend its statutes and regulations to conform to AQB criteria; (5) remit National Registry fees to the ASC in a timely manner; and (6) report disciplinary actions to the ASC. Many of these weaknesses were identified in our 2004 field review and have not been corrected.

If these weaknesses are not resolved promptly, the ASC will consider initiating a non-recognition proceeding against the State under § 1118 of Title XI, 12 U.S.C. 3347. In addition, because of these problems, the ASC is placing the State on an annual field review cycle, with follow-up reviews occurring approximately six months later.

On May 9, 2007, we received a letter from Mr. Greer, Associate Director for the Division, outlining the State’s response to the preliminary field review findings that were provided to the State by our staff while on-site for the field review. We have incorporated Mr. Greer’s comments into this letter.

- **Rhode Island’s complaint investigation and resolution process does not comply with Title XI and ASC Policy Statement 10.**

Rhode Island’s complaint investigation and resolution process does not comply with Title XI and ASC Policy Statement 10 E for two reasons. First, many complaints were not investigated and resolved in a timely manner. ASC Policy Statement 10 E provides that State agencies need to process complaints on a timely basis, and that, absent special documented circumstances, final State administrative decisions regarding complaints should occur within one

year of the complaint filing date. We cited the State for this deficiency in our previous field review letter. The chart below summarizes the statistics:

Field review cycle	Complaints received	Complaints outstanding	Complaints outstanding more than 1 year
June 2004	23	11	6 (54%)
April 2007	16 (<i>estimated</i>)	16 (<i>estimated</i>)	13 (81%)

Of the 13 complaints more than one year old, complaints were outstanding from early 2006, 2005, 2003, 2001, 2000, and 1999.

In the chart, the number of complaints received and outstanding is estimated. The Department failed to accurately track the status of each complaint. ASC staff identified eight complaints discussed in Board meeting minutes that were not listed on the complaint log. We could not find any procedures for identifying, logging, and tracking complaints and consent orders.

Second, the State's Program failed to comply with ASC Policy Statement 10 E's requirement that each State ensure that its entire system for processing and investigating complaints and sanctioning appraisers is administered in a well-documented manner. "Well-documented" means that relevant documentation pertaining to a matter exists, and it will enable ASC staff to understand the facts and determinations in the matter and the reasons for those determinations. Prior to our arrival, ASC staff requested for review 13 closed complaint files and 14 open complaints. Six of the files were with legal counsel and were not available for our review. Program staff could not locate or account for five of the remaining 21 requested files. ASC staff also requested a detailed time line regarding the current status of each case and explanations regarding the apparent processing delays. Program staff were unable to provide that information. Finally, when we reviewed the 16 files that staff located, we found that the files lacked supporting documentation and contained large, unexplained time gaps.

In his May 3rd letter, Mr. Greer stated that the Board and Division revamped and updated the State's appraiser complaint logs, and included a sample of those logs for our information. The logs appear to contain all appropriate data elements. Mr. Greer also stated that the eight complaints discussed in Board meeting minutes that were not listed on the complaint log had been identified and were being actively pursued.

To address these deficiencies, the State needs to:

1. Within 30 days of receiving this letter, develop and implement specific plans to reduce the backlog of outstanding complaints and to process all complaints on a timely basis, and provide the ASC a copy of those plans;
2. Implement and maintain an effective complaint tracking system to ensure that all complaints and outstanding consent orders are tracked accurately and provide a copy of that log to the ASC quarterly; and

3. Maintain copies of all documentation supporting all activities, including Board decisions, regarding all appraiser-related complaints in accordance with ASC Policy Statement 10 E, State record retention requirements, and, at a minimum, until the next full ASC field review.

- **Rhode Island’s temporary practice procedures do not conform to Title XI and ASC Policy Statement 5.**

Rhode Island failed to comply with Title XI and ASC Policy Statement 5 in two respects. First, the State charged a temporary practice fee in excess of \$150, which is the maximum allowable fee under the ASC Policy Statement. The fee apparently was increased to \$200 in July 2004. We cited Rhode Island for charging excessive temporary practice fees in 1997 and 2001. Apparently, the State corrected the fee, but subsequently increased the fee.

Second, Rhode Island had no procedure to provide temporary practitioners with a way to obtain an effortless extension of time to complete their assignments. When ASC staff reviewed the temporary practice application files, they found several appraisers who had been issued new temporary practice permits shortly after their previous permits expired. Because the State’s records did not tie permits to specific assignments, we were unable to determine whether the State should have issued no cost, easy extensions of existing permits as required by Policy Statement 5.

In his May 3rd letter, Mr. Greer informed us that the State has taken several steps to address this situation. First, the Board and Department were in the process of amending its temporary practice regulations on an emergency basis to address our concerns. ASC General Counsel Marc Weinberg and Policy Manager Kristi Klamet reviewed the draft regulations and found them responsive in all but one respect. The draft regulations failed to provide temporary practitioners with an effortless, cost free method of obtaining an extension of the temporary practice period. Mr. Weinberg notified Mr. Greer by email about the need to modify the draft regulations, and Mr. Greer concurred. Mr. Greer’s letter stated that the draft regulations would be adopted soon.

To resolve this situation, the Department and Board need to:

1. Keep ASC staff updated regarding the status of the temporary practice rule amendments; and
2. Provide the ASC, within seven days from the date of their adoption, a copy of the final regulations.

- **Rhode Island approved continuing education courses that are inconsistent with AQB criteria.**

In our August 24, 2004 field review letter, we identified several real estate sales courses that the State had approved for appraiser education but did not meet AQB criteria for continuing education. According to AQB criteria, “the purpose of continuing education is to ensure that the appraiser participates in a program that maintains and increases his/her skill, knowledge, and competency in real estate appraising.” We directed the Board and Department to rescind approval for any courses that did not conform to AQB criteria and to refrain from approving such

courses in the future. In April 2005, Rhode Island notified the ASC that the Board had reviewed and deleted the courses it believed were inconsistent with AQB criteria.

During the current field review, ASC staff found that only some of those course approvals identified in 2004 were rescinded. It appeared that the Board only rescinded non-conforming courses being offered by the Rhode Island Association of Realtors. The following Board-approved courses, which appeared not to conform to AQB criteria, still were being offered:

- Understanding the Real Estate Closing;
- How to Buy & Sell Real Estate at Auction;
- Understanding the Real Estate Auction Process;
- How to List-Sell-Close;
- How to Market & Advertise Real Estate;
- How to Market/Sell Historic Homes;
- Financing of Real Estate & Closing Statement;
- Real Estate Investment;
- Integrating Technology for Realtors;
- Code of Ethics;
- Real Estate Agent; and
- Pricing Property to Sell.

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

1. Immediately review all currently approved continuing education courses to ensure their conformance to AQB criteria and rescind approval for any nonconforming courses;
2. Within 15 days from the date of our field review letter, provide ASC staff with a revised list of approved continuing education courses;
3. Within 30 days from the date of our field review letter, determine whether each appraiser whose credential was renewed from July 1, 2004, to present, relied on any continuing education course that did not conform to AQB criteria;
4. Within 45 days from the date of our field review letter, for each appraiser who did not have sufficient AQB-compliant continuing education to support renewal of his/her credential, advise the appraiser in writing of the number of hours of unacceptable continuing education and that he/she must take the necessary education within 60 days to maintain his/her appraiser credential. NOTE: This “make up” education cannot be used to meet the requirements for another continuing education cycle;
5. Within 10 days after the close of the 60-day period to obtain the necessary education, determine which appraisers have not earned the necessary hours of education:
 - a. For certified appraisers, promptly downgrade the appraisers to a non-certified classification or recall their certifications and reissue them over-stamped with the phrase, “Not Eligible to Appraise Federally Related Transactions.” Appraisers

choosing over-stamped credentials will be removed from the National Registry;
and

- b. For licensed appraisers, modify the State's National Registry data submissions to reflect that these appraisers are **not** AQB Compliant. This non-AQB Compliant status will be reflected on the ASC's Web site.
6. Within 20 days after the close of the 60-day period to obtain the necessary education, provide the ASC with a spreadsheet identifying:
 - a. Each appraiser who renewed his/her credential during the target time period;
 - b. The results of each appraiser's continuing education audit, including the number of unacceptable hours of education, if any;
 - c. Whether the appraiser has taken the necessary "make up" education; and
 - d. What disciplinary action, if any, is being taken for each non-compliant appraiser.
- **Rhode Island regulations allow continuing education credit that do not conform to AQB criteria.**

Board regulations provide that an appraiser may receive up to one hour of continuing education credit for attending a Board meeting, provided that the meeting for which credit is sought was at least one hour long. The regulations also allow appraisers to obtain a maximum of 12 hours of continuing education credit per year.

In August 2004, the AQB determined that a State could award continuing education credit to appraisers who attended a State Board/Commission meeting under the following circumstances:

1. The State Board/Commission meeting must be at least two-hours long (this is consistent with the requirement that continuing education courses must be a minimum of two-hours in length);
2. A credentialed appraiser may not receive continuing education credit for attending a State Commission 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
3. The State Board/Commission must verify the identification of any credentialed appraiser wishing to receive credit for attending a State Commission meeting and must have adequate procedures in place to ensure the credentialed appraiser attends the meeting for the required period of time.

This concern was identified during our 2004 field review, and we directed Rhode Island to amend its regulations to conform to AQB criteria.

In April 2005, Rhode Island petitioned the AQB to reconsider its position. The ASC received a copy of that letter, and we advised the Board that, unless we heard otherwise, Rhode Island's appraisers would have to comply with the AQB's position. The AQB did not grant the relief requested by Rhode Island.

The AQB recently adopted an Interpretation on this subject that becomes effective January 1, 2008. Under the new Interpretation, State agencies may award continuing education credit to credentialed appraisers attending State agency meetings. To qualify, continuing education credit may be awarded for a single meeting per continuing education cycle, the meeting must be public, and must be at least two hours long. The total credit cannot exceed seven hours. Finally, the State agency must ensure that the appraiser claiming the credit actually attended the meeting for the required time period.

During our field review, ASC staff found that continuing education credit had been granted to several appraisers for multiple Board meetings within one continuing education cycle.

Mr. Greer advised us in his May 3rd letter that the emergency regulations would conform the problematic rule provisions to the AQB's soon-to-be effective Interpretation. The only aspect missing from the draft regulations was the requirement that the State agency ensure that the appraiser claiming the credit actually attended the meeting for the required time period.

To cure this longstanding deficiency, the State needs to:

1. Ensure that its emergency regulations, as adopted, fully comply with the AQB's current position regarding continuing education credit for attending State agency meetings (including the need to ensure that the appraiser claiming credit actually attended the meeting for the required time period) and we recommend that the State adopt the AQB's recently adopted Interpretation with a January 1, 2008 effective date;
2. Advise ASC staff when those regulations are adopted and forward to us a copy of the adopted provisions;
3. Within 30 days from the date of this letter, determine whether each appraiser whose credential was renewed from July 1, 2004, to present, relied on continuing education credit granted for attendance at more than one Board meeting during a continuing education cycle;
4. Within 45 days from the date of this letter, for each appraiser who did not have sufficient continuing education to support renewal of his/her credential, advise the appraiser in writing of the number of hours of unacceptable continuing education and that he/she must take the necessary education within 60 days. NOTE: This "make up" education cannot be used to meet the requirements for another continuing education cycle;

5. Within 10 days after the close of the 60-day period allow for the above identified appraisers to obtain the necessary education, determine which appraisers have not earned the necessary hours of education:
 - a. For certified appraisers, promptly downgrade the appraisers to a non-certified classification or recall their certifications and reissue them over-stamped with the phrase, “Not Eligible to Appraise Federally Related Transactions.” Appraisers choosing over-stamped credentials will be removed from the National Registry; and
 - b. For licensed appraisers, modify the State’s National Registry data submissions to reflect that these appraisers are **not** AQB Compliant. This non-AQB Compliant status will be reflected on the ASC’s Web site.
 6. Within 20 days after the close of the 60-day period to obtain the necessary education, provide the ASC a spreadsheet identifying:
 - a. Each of the appraisers who renewed credentials during the target time period;
 - b. The results of each appraiser’s continuing education audit, including the number of unacceptable hours of education, if any;
 - c. Whether the appraiser has taken any necessary “make up” education; and
 - d. What disciplinary action, if any, is being taken for each non-compliant appraiser.
- **Rhode Island’s statute and regulations allow the Board to grant up to a six-month extension of an appraiser credential for good cause.**

Rhode Island’s statute and regulations allow the Board, for good cause, to grant an appraiser with an expiring credential up to a six-month extension of the credential’s expiration date. The Board has granted extensions when appraisers failed to have sufficient continuing education for renewal. During an extension period, the appraiser’s credential remains valid, and the appraiser can perform appraisals in federally related transactions. We cited the State for this deficiency in our 2001 field review letter and instructed the Board not to grant extensions to certified appraisers who failed to meet the AQB’s continuing education criteria, or for any other purpose that would conflict with Title XI’s requirements (including AQB criteria and ASC Policy Statements).

During our current field review, ASC staff found that the Board continued to grant renewal extensions.

In his May 3rd letter, Mr. Greer informed the ASC that the emergency package of draft regulations contained a rule change that would retain the ability for the Board to grant six month extensions of appraiser credentials for good cause. The new language would require the Department/Board to instruct us to remove the affected appraisers’ credentials from the National

Registry and to “be considered inactive for purposes of performing appraisals in connection with federally related transactions.”

While the State’s response is a step in the right direction, the State needs to accomplish more. First, the new regulations need to reflect that appraisers are not removed from the National Registry when their credentials expire. The appraiser credentials become Inactive. Second, certified appraisers whose credential expiration dates are extended by the State for failing to meet the AQB’s continuing education requirements cannot perform appraisals in connection with federally related transactions, but would remain eligible to perform appraisals in non-federally related transactions. To conform to Title XI and ASC Policy Statement 8 A, Rhode Island would need to recall existing certificates and reissue them over stamped with, “Not Eligible to Appraise Federally Related Transactions.” Alternatively, the State could choose to downgrade affected appraisers to a non-certified credential. Third, the National Registry record relating to licensed appraisers who failed to meet the AQB’s continuing education criteria would need to be changed from “AQB Compliant” to “Non-AQB Compliant.”

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

1. Cease granting extensions to certified appraisers who fail to conform to the AQB’s continuing education criteria, or for any other purpose that would conflict with Title XI’s requirements (including AQB criteria and ASC Policy Statements);
 2. Within 15 days from the date this letter, notify ASC staff, in writing, of the Department’s intentions regarding this issue;
 3. Within 30 days of the date of this letter, identify any certified appraisers who have been issued current extensions and identify them as “Inactive” on the National Registry. Also, recall any hard copy certificates and reissue such certifications over stamped with the phrase, “Not Eligible to Appraise Federally Related Transaction.” As an alternative, the State may downgrade these appraisers’ credentials to a non-certified status; and
 4. Within 30 days of the date of this letter, change any affected licensed appraisers’ AQB Compliant status on the National Registry to “AQB Non-compliant.”
- **Rhode Island does not remit payment for invoices within 45 days in accordance with Policy Statement 8, and does not report all disciplinary actions pursuant to Policy Statement 9 A.**

ASC Policy Statement 8 requires that States submit appraiser data to the ASC no less frequently than monthly and pay invoices within 45 days from the invoice date. Since our 2004 field review, the ASC issued 31 invoices to Rhode Island. Rhode Island failed to remit payment for 16 of the 31 invoices within the 45-day requirement.

ASC Policy Statement 9 A requires State Agencies to expeditiously report to the ASC any disciplinary actions taken against appraisers. The National Registry currently reflects that Rhode Island has taken disciplinary action against 13 appraisers. However, when ASC staff

reviewed the Board's meeting minutes, they discovered at least six disciplinary actions that were not listed on the National Registry.

In his May 3rd letter, Mr. Greer reported that the Department added to its National Registry database submission format "fines" and "warnings," the two disciplinary fields that were missing.

To resolve this concern, the Board and Department need to:

1. Develop and implement procedures to ensure the timely remittance of National Registry data and fees in accordance with ASC Policy Statement 8;
2. Develop and implement procedures to ensure that all disciplinary actions are reported to the ASC pursuant to Policy Statement 9 A, and, within 30 days of the date of our field review letter, ensure that all disciplinary actions relating to **all** Rhode Island credentialed appraisers, past and present, are reflected in the National Registry; and
3. Within 30 days from the date of our field review letter, forward to ASC staff a copy of those procedures.

- **2008 AQB criteria changes**

Currently, the Board approves qualifying and continuing education courses for three-year periods. Some of these course approvals extend beyond the January 1, 2008 effective date of the revised AQB criteria. Many of these courses will not conform to 2008 AQB criteria or will require substantial modification.

To ensure proper implementation of the 2008 AQB criteria changes, the Department and Board need to:

1. Within 30 days from the date of this letter, provide the ASC with a specific plan of action regarding implementation of the 2008 AQB criteria;
2. Review all qualifying education courses that have been approved with an expiration date beyond January 1, 2008, to determine whether the courses will comply with the 2008 criteria; and
3. Within 60 days from the date of this letter, provide the ASC with the results of the course review.

Unless indicated otherwise above, please respond to our findings and recommendations within 60 days from the date of this letter, and as otherwise specified in the corrective action steps. 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: Jeffrey Greer, Associate Director, Division of Commercial Licensing & Regulation