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Appraisal Subcommittee

Federal Financial Institutions Examination Council

April 20, 2007

Mr. Marc Headden, Chair
Tennessee Real Estate Appraiser Commission
500 James Robertson Parkway
Suite 620
Nashville, Tennessee 37243-1166

Dear Mr. Headden:

Thank you for the cooperation and assistance of the Tennessee Real Estate Appraiser Commission (“Commission”) and the Department of the Commerce and Insurance (“Department”) staff during the December 11-12, 2006 Appraisal Subcommittee (“ASC”) review of Tennessee’s real estate appraiser regulatory program (“Program”). Based on our review, Tennessee needs to address the following four concerns to bring its Program into substantial compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (“Title XI”). We previously cited the State for three of these concerns in our 2004 field review letter. As a result, we plan to perform a follow-up review of your Program within the next six to nine months.

- **Tennessee does not investigate and resolve complaints in a timely manner as required by ASC Policy Statement 10 E.**

Title XI requires that States adequately supervise their certified and licensed appraisers. An effective complaint investigation and resolution process is a critical element of adequate supervision. ASC Policy Statement 10 E. provides that State appraiser regulatory agencies need to process complaints on a timely basis. Absent special circumstances, final State administrative decisions regarding complaints should occur within one year of the complaint filing date.

As shown in the chart below, Tennessee’s complaint investigation and resolution performance has not improved since 2003, when the ASC cited the State for not investigating and resolving complaints in a timely manner.

Field Review Cycle	Complaints Received	Complaints outstanding	Complaints outstanding more than 1 year
Jan 2001 – Dec 2003	184 (~61 per yr.)	55	25 (45%)
Jan 2004- Dec 2006	182 (~61 per yr.)	48	22 (46%)

Of the 22 complaints outstanding for more than one year, the Commission received two in 2002, one in 2003, eight in 2004, and 11 in 2005.

To resolve this concern, the Commission needs to:

1. Comply with ASC Policy Statement 10 by ensuring that all complaints of appraiser misconduct are investigated and resolved in a timely manner. Final Commission decisions regarding complaints should occur within one year of the complaint filing date;
 2. Within 60 days from the date of our field review letter, provide ASC staff a written plan detailing how the State intends to comply with item one above; and
 3. Continue providing quarterly complaint logs to ASC staff.
- **Complaint files lacked adequate documentation regarding the Commission's reasons underlying its final decisions.**

ASC Policy Statement 10 E. requires a State to ensure that its program for investigating and resolving complaints and sanctioning appraisers, among other things, is administered in a well-documented manner. Under the Policy Statement, "well documented" means that relevant documentation pertaining to a matter exists, and that it will enable ASC staff to understand the facts and determinations in the matter and the reasons for those determinations.

During our 2003 field review, ASC staff found that some enforcement files did not reflect the reasoning behind the Commission's determinations. As a result, final actions did not always appear consistent with other evidentiary information in the file or Commission discussions. In the ASC's resulting field review letter, the ASC directed the Commission to add the necessary documentation to the enforcement file that supports the reasons for disciplinary action and identifies the staff, Commission members, and/or contract reviewer involved in the review and/or decision making process. The Commission responded to that finding by including in each resolved complaint file the related page from the Commission's meeting minutes.

During the current field review, ASC staff found that the Commission meeting minutes did not resolve this concern. The meeting minutes only provided a description of the general nature of the complaint and the Commission's sanction. Typically, case files included only the appraisal in question, a checklist with the various case-processing steps, and the Commission's decision, which often was noted in summary manner, such as "Dismissed." Investigatory reports frequently were not included in the files. When investigatory reports were present, they seemed to recite only the allegations in the complaint and a recommendation either to dismiss the complaint or to impose a specific sanction. The underlying reasons for recommended actions were not documented.

While on-site, we learned that the Commission, based on advice from the prior Commission counsel, did not believe that the Commission had the authority to suspend or revoke an appraiser's credential. As a result, the Commission had never suspended or revoked an appraiser's credential as a sanction in a disciplinary action. After ASC staff discussed the situation with Commission staff and the current Commission counsel, the Commission now

recognizes that its enforcement authority includes a full range of sanctions, from requiring an individual to take an education course to revoking an appraiser's credential.

To resolve our concern regarding file documentation, the Commission needs to ensure that complaint files are adequately documented as provided in ASC Policy Statement 10 E.

- **Tennessee does not process completed temporary practice applications within five business days as required by ASC Policy Statement 5.**

Based on the State's temporary practice log and files, the Commission failed to process completed temporary practice applications within five business days of receipt, as required by ASC Policy Statement 5. ASC staff reviewed 30 temporary practice applications and found that ten were not processed within the required time frame.

Commission staff attributed the delays to the fact that temporary applications are received first by the Revenue Department, which processes temporary practice fees. After the fees are processed, the Revenue Department forwards the applications to the Commission staff. Often, this process leaves insufficient time for the staff to complete the processing within five business days.

When we discussed this situation with Commission staff, they stated that it would be highly unlikely for the Revenue Department to be able to expedite the fee processing. However, Commission staff indicated that temporary practice applications generally could be processed within one day of receipt by the Commission, if processing were prioritized.

Temporary practice applications must be processed in accordance with ASC Policy Statement 5, specifically, within five business days of the State receiving a completed application. The Commission needs to prioritize temporary practice permit requests, as suggested by the Commission's staff. If prioritization does not address this situation, the Commission will need to work with the Revenue Department to ensure that Tennessee complies with Title XI and ASC Policy Statement 5.

- **The Commission's regulations do not conform to AQB criteria.**

In our January 29, 2004 field review letter, we noted that the Commission's regulations failed to conform to AQB criteria in two ways. First, the regulations failed to specify that applicants must take the 15-hour National USPAP Course taught by an AQB-certified USPAP instructor. Secondly, the regulations continued to allow experience credit for authorship of a textbook or a journal article. During the current field review, ASC staff found that the Commission's regulations still contained these provisions. ASC staff determined that, despite the non-conforming regulations, the Commission had operated in conformance with AQB criteria. Nevertheless, the regulations need to be amended to ensure that they conform to AQB criteria and to avoid conflicts between law and practice.

Please keep us informed of your efforts to adopt these changes and notify us in writing when the regulatory process is completed.

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: Nicole Urban, Administrative Director