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# Appraisal Subcommittee

*Federal Financial Institutions Examination Council*

December 23, 2005

Ms. Shirley Ward, Chair  
Texas Appraiser Licensing and Certification Board  
P.O. Box 238  
Alpine, Texas 79831

Dear Ms. Ward:

Thank you for your cooperation and your staff's assistance in the October 13-14 and November 17-18, 2005 Appraisal Subcommittee ("ASC") review of Texas' real estate appraiser regulatory program ("Program"). As discussed below, the Texas Appraiser Licensing and Certification Board ("Board") needs to address four concerns to bring its Program into compliance with Title XI of the Financial Institutions, Reform, Recovery, and Enforcement Act of 1989, as amended ("Title XI"). These four concerns relate to the State's: acceptance of experience affidavits to support issuing certified credentials; continuing failure to investigate and resolve complaints on a timely basis; acceptance of continuing education courses that apparently do not conform to Appraiser Qualifications Board ("AQB") certification criteria; and deferral of continuing education for certified appraisers under certain circumstances. We are particularly troubled that your complaint investigation and resolution program has deteriorated since our previous field review.

- **Texas accepted experience affidavits to support initial appraiser certifications in violation of ASC Policy Statement 10.**

States must ensure that applicants for certified appraiser credentials meet the AQB's certification criteria, including the experience requirement. Recognizing the importance of the AQB experience requirement for initial certification, the ASC adopted an amendment to ASC Policy Statement 10, effective January 1, 2005, that prohibits the acceptance of an appraiser affidavit to document compliance with the AQB's experience criterion. According to the findings from our field review in mid-October 2005, Texas issued 253 certified credentials from January 1 through October 1, 2005. In processing these applications for certification, the Board accepted affidavits from these applicants, attesting to their hours of experience for certification. Supporting documentation was not required or provided by the applicant. The applicant's affidavit merely identified the total number of experience hours, the type of experience, and the time period in which the experience was obtained. Based on this recent review, Texas issued certified appraiser credentials in 2005 that were supported by an applicant's experience affidavit and, thereby, failed to comply with Policy Statement 10.

This ASC policy was fully disclosed to the States and, moreover, was announced to the States prior to final adoption of the amendments to Policy Statement 10. On March 31, 2004, the ASC sent a letter to all States seeking comments regarding the proposed amendments that among other things, prohibited State acceptance of affidavits for qualifying experience and education.

Texas did not comment on the proposal. At its August 11, 2004 meeting, the ASC adopted new paragraph 10 F to Policy Statement 10 on experience affidavits. On August 25, 2004, the ASC sent a letter to all States announcing adoption of the revised Policy Statement, with an effective date of January 1, 2005. That letter announced, among other things, that the amended Policy Statement prohibited acceptance of experience affidavits for initial certification.

While on site during the August 2004 follow-up review, ASC staff discussed with the Board the newly adopted amendments to Policy Statement 10. Further, in a letter dated November 17, 2004, the ASC again reminded States that the ASC had amended Policy Statement 10 by adding paragraph 10 F on experience affidavits. Notwithstanding these communications, Texas failed to change its practice to conform to Policy Statement 10 and continued to accept and rely on experience affidavits.

Currently Texas' statute provides that the Board must accept affidavits for experience claims, and that the Board may audit no more than five percent of appraiser applicants. Texas has an automated system that designates every 20<sup>th</sup> application for audit. The audited applicant is directed to provide an experience log documenting the appropriate number of experience hours and months of practice. Staff then requests and reviews appraisal reports from each audited applicant. This process requires audited applicants to successfully complete the audit prior to receiving a certified credential.

During our October 2005 field review, ASC staff again discussed with the Board the requirement to conform to Policy Statement 10. The Board agreed that it could change the current affidavit process to require all applicants to submit experience logs. The Board would audit the experience logs in five percent of the applications for compliance with AQB criteria. This process would result in an acceptable use of experience logs and would not be considered affidavits for Policy Statement 10 purposes. Further, this would be consistent with the Texas' statute that limits the percentage of applicants that the Board may audit to no more than five percent.

To address this concern, the Board needs to:

1. Immediately stop issuing certified credentials supported by experience affidavits;
2. Within 30 days of receiving this letter, identify all appraisers who obtained a certified credential since January 1, 2005, and provide a listing of those appraisers to the ASC;
3. Within 60 days of receiving this letter, contact the appraisers identified in step 2 and request an experience log, or other supporting documentation, to support their experience claims (if the Commission does not have such supporting documentation in its records);
4. Within 90 days of receiving this letter, review the experience logs or other documentation for all appraisers identified in Step 2 to determine whether the appraisers conform to AQB criteria; and
5. Within 120 days of receiving this letter, downgrade to the appropriate classification appraisers who cannot support their certified credential or who fail to submit supporting documentation. Alternatively, the Board could recall existing certifications and over stamp them with wording similar to "Not eligible to appraise federally related transactions." In this case, the appraiser's status on the National Registry would change from "Active" to "Inactive."

- **Texas' complaint investigation and resolution process continues not to comply with Title XI and ASC Policy Statement 10 because complaints are not investigated and resolved in a timely manner.**

ASC Policy Statement 10 E., in part, requires that each State's entire system for processing and investigating complaints and sanctioning appraisers be administered in an effective manner. In addition, State agencies must process complaints of appraiser misconduct or wrongdoing on a timely basis. Absent special documented circumstances, final State agency administrative decisions regarding complaints should occur within one year of the complaint filing date.

During our current field review, we found that, while complaint files were well documented and decisions appeared fair and equitable, the complaint investigation and resolution program had worsened since our previous reviews. The number of complaints received continued to increase, from approximately 84 per year to 100 per year. There were 144 outstanding complaints, a significant increase from the 89 outstanding at our 2002 field review. Additionally, 53 complaints (37%) were outstanding for more than one year.

As noted in our previous reviews, the ASC has found deficiencies in the Texas complaint process. During the three years preceding our 2002 field review, the Board received an average of 84 complaints per year. In our January 7, 2003 field review letter, we noted that, of the 89 unresolved complaints, 15 (17%) had been in process for more than one year. We also noted the Board's limited resources and admonished the Board to make every effort to ensure that its Program did not deteriorate with the increasing complaint load. During 2003 and 2004, the status of the complaint investigation and resolution program significantly worsened, notwithstanding the hiring of an additional part-time investigator in March 2004. We performed a follow-up review in August 2004 at which time the number of unresolved cases had increased from 89 to 118 and complaints-in-process for more than one year had increased from 15 to 40 (34%).

More recently, over the past 18 months, the Board has been working on statutory changes designed to address the situation. During our August 2004 follow-up review, Commissioner Wayne Thorburn and Chairman Wayne Mayo presented ASC staff with proposed corrective actions. Those proposed actions were included in the Board's strategic plan, which had been submitted to the Governor in July 2004. That plan, in part, proposed an extensive reorganization of the investigative process. Under this reorganization, hearing authority would be transferred from the State Office of Administrative Hearings to an in-house administrative law judge, who also would be responsible for hearing Real Estate Commission cases. In addition, appeals would be heard by the entire Board. Finally, Board staff would be authorized to make decisions on the investigation and disposition of complaints. Mr. Thorburn and Mr. Mayo contended that additional investigative resources would have minimal benefit until the investigative process was streamlined.

Further, we understand that the Texas legislature amended its statute to adopt the Board's plan as outlined above. Under that amendment the investigative and complaint resolution process will be reorganized, effective January 1, 2006. At its November 18, 2005 meeting, the Board adopted regulations to implement the reorganization.

Recognizing that it will take time to fully implement this plan, we will continue to closely monitor your progress to improve the complaint investigation and resolution process. Please provide us quarterly complaint logs. We plan to perform a field review in the fall of 2006 to assess your progress. At that time, we expect to see a substantial improvement in the timeliness and effectiveness of the Board's complaint investigation and resolution process.

- **Texas approved continuing education courses that appear not conform to AQB criteria.**

While on site, ASC staff identified two Board-approved continuing education courses that appeared inconsistent with the AQB criteria provision that, "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." These courses were real estate sales-related courses named, "Texas Real Estate Commission Ethics" and "TREC Legal Update." While ethics and legal matters are important in the appraisal profession, part of the content of these courses appeared to address issues more pertinent to real estate brokers and agents rather than appraisers.

The Board needs to review promptly these two courses to determine their compliance with AQB criteria. If the Board determines that these courses comply with AQB criteria, the Board needs to document its reasoning and the number of hours approved as appraisal-related. If the Board determines that these courses do not comply with AQB criteria, the Board needs to rescind its approval of these courses.

- **Texas regulations allow for deferral of continuing education requirements for servicemen on active duty, which is inconsistent with AQB criteria.**

During our field review, ASC staff noted that the Board, under its regulations, may defer the State's continuing education requirements for certified appraisers on active military service. Deferrals or waivers of continuing education provisions are not permitted under the AQB certification criteria. The Board and staff confirmed they have never granted deferrals. During the November 18<sup>th</sup> Board meeting, the Board voted to draft language to amend its regulations to allow certified appraisers on active duty in the armed forces to be placed on inactive status until completion of continuing education requirements, which would be consistent with AQB criteria.

Please keep us informed about the status of this regulatory change and provide us promptly with a copy of the final regulations.

Unless otherwise noted above, please respond to our findings and recommendations within 60 days following the receipt 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.

Please contact us if you have further questions.

Sincerely,

Virginia M. Gibbs  
Chairman

cc: Wayne Thorburn, Commissioner, Board