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Appraisal Subcommittee

Federal Financial Institutions Examination Council

April 5, 2006

Shirley Ward, Chairperson
Texas Appraiser Licensing and Certification Board
P.O. Box 12188
Austin, TX 79711-2188

Dear Ms. Ward:

Thank you for your February 17, 2006 letter responding to our December 23, 2005 field review letter. We reviewed your remarks along with Commissioner Wayne Thorburn's correspondence of January 19th, February 9th and March 24th. During our field review, we identified four areas that needed your attention. Based on your and Mr. Thorburn's responses, it appears that the Texas Appraiser Licensing and Certification Board ("Board") is making progress toward bringing its real estate appraiser regulatory program ("Program") into substantial compliance with Title XI of the Financial Institutions, Reform, Recovery, and Enforcement Act of 1989, as amended, ("Title XI"). We appreciate Texas' continuing efforts in this area.

Following is a summary of the concerns identified during our field review, the necessary actions specified in our December 2005 field review letter, and the status of the Board's corrective actions based on information furnished to Appraisal Subcommittee ("ASC") staff.

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

Our field review letter itemized the following five steps that the Board needed to take to address this concern:

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."

Step 1 was addressed during our October 2005 field review. Texas immediately stopped issuing certified credentials supported by experience affidavits. While on-site, ASC staff again discussed with the Board the requirement to conform to ASC Policy Statement 10.

On February 9, 2006, Commissioner Thorburn, consistent with Step 2, provided the ASC with a listing of 253 appraisers who obtained certified credentials since January 1, 2005.

Regarding Step 3, you noted in your February 17th letter that 110 of the 253 appraisers identified in Step 2 failed to document the necessary 24 or 30 months of experience or the required hours of experience. The Board sent each of these appraisers a letter requiring that the missing information be submitted no later than March 1, 2006.

In Commissioner Thorburn's March 24, 2006 letter and attached spreadsheet, Texas provided us with updated information regarding these appraisers. He informed us that 121 certified appraisers failed to document their experience claims. Of the 121 appraisers, four did not respond, and one failed to fully document his experience claims. As requested, we have placed these appraisers on an inactive status on the National Registry. We also have changed their "AQB Compliant" status to "No." Should any of these appraisers subsequently document compliance with the AQB experience criteria, you will need to notify us in writing of that fact and the effective date compliance was achieved.

Commissioner Thorburn asked for further guidance regarding how Texas should implement Step 5. He inquired whether it would be acceptable for the Board to downgrade a non-compliant certified general real estate appraiser to the certified residential level, if he or she previously had held that credential. This course of action would be acceptable. Likewise, the same process would be acceptable for a certified residential credential being downgraded to a licensed credential.

Please keep in mind that the Board needs to investigate the circumstances involved in each of these appraisers' actions and, depending on the investigatory findings, might need to take disciplinary action. In general, there are two reasons why applicants would be unable to document the required experience. First, an applicant applied for the credential believing that he or she met the State's and AQB's experience requirements. During the affidavit audit, the State determines that the experience does not comply or is lacking in the correct number of hours and/or months of the requisite experience. In this instance, it would appear that the appraiser acted in good faith. In such cases, it might be adequate simply to admonish the appraiser and to downgrade the appraiser to the appropriate credential level.

The second situation is more troublesome. In this situation, the appraiser affirmed through the use of the affidavit that he or she had obtained the necessary experience, when in fact, he or she had not. In effect, the appraiser misrepresented his or her status and, possibly, falsified a government document to obtain the credential. Such a situation casts serious doubt on the appraiser's ethics. As ethical behavior is at the heart of appraisal practice, in these situations we expect the State to take much stronger disciplinary action than simply an admonishment and a downgrade to an appropriate level.

Finally, an appraiser, who does not respond to the State's request for documentation should be sanctioned with appropriate disciplinary action.

Commissioner Thorburn also asked whether he would need to inform the downgraded appraisers that they could not perform appraisals in connection with federally related transactions. Appraisers downgraded to either the certified residential or licensed levels may continue to perform appraisals in connection with federally related transactions. Step 5's reference to the alternative of recalling existing certifications and reissuing them with the overstamp, "Not eligible to appraise federally related transactions" would apply only if the Board determined not to downgrade the credentials of the affected appraisers.

Please keep us informed of your progress toward completing Step 5.

- **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.**

We appreciate the Board's efforts to address our concerns about the complaint investigation and resolution process. We are pleased that the Board has implemented several steps to expedite the process.

In your February 17th letter, you stated that, while the number of complaints had continued to increase, the Board intends to close all complaints over one year old by this fall. We hope that you can meet this goal. We caution the Board to ensure that each complaint is adequately investigated, and that each disposition is fair and appropriate.

We recognize that it will take time to fully implement the changes authorized by the revised regulations and to determine whether they are effective. We will continue to closely monitor your progress and look forward to seeing whether your initiatives are successful during our follow-up review in the fall. Please continue to provide us quarterly complaint logs.

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

In our December 23rd field review letter, we identified two Board-approved continuing education courses that appeared inconsistent with the AQB criteria that provides 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." We understand that the Board has withdrawn its approval of these two 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 existing AQB certification criteria. The Board and staff confirmed they have never granted deferrals. During the November 18th 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.

You attached with your February 17th letter a proposed rule amendment that would allow a licensed or certified appraiser returning from active duty to be placed on active status and given an additional twelve months to complete the required continuing education. The AQB criteria currently do not allow for any deferral of continuing education. Please note, however, that the AQB published a First Exposure Draft on March 22, 2006, consisting of several proposed Interpretations and Guide Notes to the AQB criteria, including one Interpretation pertaining to "Continuing Education Waivers and Deferrals." In pertinent part, that proposed Interpretation states:

Deferrals may not be granted to credential holders, except in the case of individuals returning from active military duty. State appraiser regulatory agencies may allow credential holders returning from active military duty to be placed in active status for a period of up to 90 days pending completion of all continuing education requirements.

Because of the pending AQB Interpretation, we will abide our decision on this issue until the AQB adopts its final Interpretation on this subject. We suggest, however, that you consider not adopting your current proposed rule so that you will not need to amend it in the future to bring it into compliance with the AQB's final Interpretation.

Our field review letter, your response, and any other previous correspondence between us regarding the field review now will become publicly available on our Web site.

Please contact us if you have any questions.

Sincerely,

Ben Henson
Executive Director

cc: Wayne Thorburn, Commissioner, TALCB