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Appraisal Subcommittee

Federal Financial Institutions Examination Council

December 18, 2006

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

Dear Ms. Ward:

Thank you for your cooperation and your staff's assistance in the October 25-26, 2006 Appraisal Subcommittee ("ASC") follow-up review of Texas' appraiser regulatory program ("Program"). In our December 23, 2005 field review letter, we notified the Texas Appraiser Licensing and Certification Board ("Board") that Texas' Program was not in compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended ("Title XI"). We identified four areas of concern that needed prompt corrective action. During our follow-up review, we focused on these four concerns.

As discussed in more detail below, Texas has resolved two of our concerns, made progress towards resolving one concern, but failed to make progress regarding the fourth concern. Additionally, we identified a new concern during the follow-up review. This letter sets forth the ASC's findings and the actions the Board needs to take to bring the Program into substantial compliance with Title XI.

While Texas has taken certain actions to improve its complaint investigation and resolution program, the timeliness of investigation and resolution continues to deteriorate. As a result, Texas' Program still fails to comply with Title XI, as implemented in ASC Policy Statement 10 F. When we return for our field review in the fall of 2007, we expect to see a substantial reduction in the number of complaints more than one year old and a program in which complaints are investigated and resolved in a timely manner. Should we not see substantial improvement by the time of our 2007 field review, ASC staff will recommend that the ASC consider initiating a non-recognition proceeding under § 1118(b) of Title XI, 12 U.S.C. 3347(b).

Previous Findings, Current Status, and Recommended Action

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

Previous Finding: ASC staff found that the Board accepted affidavits from applicants attesting to the required hours of experience. Supporting documentation was not required or provided. Each affidavit merely identified the total number of experience hours obtained, the type of experience, and the time period in which the experience was obtained. Acceptance of these experience affidavits was a violation of Title XI, as implemented by ASC Policy Statement 10.

In our December 23, 2005 field review letter, ASC instructed the Board to take a number of curative actions.

Current Status: In response to our December 2005 field review letter, Texas audited 253 appraisers who were issued certified credentials from January 1 through mid-October 2005. Two hundred fifty appraisers supplied documentation to support the experience claimed on their original certification applications. The Board reviewed work products of 5% of the 253 appraisers and found the work USPAP-compliant. Three appraisers failed to respond to the Board's request for supporting documentation. The Board initiated disciplinary proceedings against these three appraisers, seeking revocation of their credentials. The Board instructed the ASC to place their certifications on Inactive status, and flagged their files to ensure that the credentials are not inadvertently renewed. Finally, The Board revised its experience affidavit to require a detailed experience log from all appraiser applicants. Appropriate use of the experience log will ensure that Texas complies with ASC Policy Statement 10. In summary, Texas completed all required curative actions.

Necessary Action: None.

- **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.**

Previous Finding: In our January 7, 2003 field review letter, we noted the increase in the number of complaints being received and the Board's limited amount of investigative resources. We 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. As a result, we performed a follow-up review in August 2004. During the follow-up review, we noted that the number of unresolved cases had increased and that complaints outstanding for more than one year had increased, with several complaints outstanding two or more years.

During our August 2004 follow-up review, Commissioner Thorburn and Chairman Mayo presented ASC staff with proposed solutions. Those solutions were included in the Board's strategic plan, which had been submitted to the Governor in July 2004. The plan, in part, proposed an extensive reorganization of the investigative process. Mr. Thorburn and Mr. Mayo contended that additional investigative resources would have minimal benefit until this investigative process was streamlined.

In our November 12, 2004 response letter, we informed the Board that, while we believed these proposed changes would improve the current investigation and resolution process, we were concerned that the changes alone would not be sufficient to resolve the overall Program weaknesses. Nonetheless, we were willing to give the Board an opportunity to implement its plan, if approved by the Governor.

During our October/November 2005 field review, we found that the timeliness of the complaint investigation and resolution program had worsened. The number of complaints received continued to increase, from approximately 84 per year to 100 per year. At the time of our 2005 field review, there were 144 outstanding complaints, a significant increase from the 89 outstanding at our 2002 field review. Additionally, 53 complaints had been outstanding for more than one year, compared to 15 at our 2002 review.

The Board made several attempts to address our concerns following our August 2004 follow-up review. Nevertheless, the number of outstanding complaints, particularly those in process for more than one year, continued to increase.

The Texas legislature amended the Board's enabling statute effective September 1, 2005, authorizing the changes requested by the Board. The legislative amendment allowed for reorganization of the investigative process. At its November 18, 2005 meeting, the Board adopted regulations to implement this new process, effective January 1, 2006.

Current Status: Since our October/November 2005 field review, the average number of complaints received per year more than doubled from 100 per year to 212. The number of outstanding complaints increased from 144 to 206, and the number of complaints outstanding for more than one year increased from 53 to 69. Of the 69 complaint outstanding more than one year, 40 were one to two years old; 25 were two to three years old; two were three to four years old; one was four to five years old; and one was more than five years old.

Following is a summary of complaint statistics.

Field Review	Complaints received in preceding 3 years	Complaints outstanding	Complaints outstanding more than 1 year
November 2002	252 (84/yr)	89	15 (17%)
October 2005	302 (101/yr)	144	53 (37%)
October 2006	212 (212/yr)	206	69 (34 %)

Texas implemented several steps to improve its complaint investigation and resolution program. Despite these actions, the number of outstanding complaints and those outstanding for more than one year continued to increase.

Although Texas made efforts to improve the timeliness of its complaint investigation and resolution process, those efforts have been unsuccessful in correcting the weakness in the Program. 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 provides that State appraiser regulatory agencies need to process complaints on a timely basis and that, absent special circumstances, final State administrative decisions regarding complaints should occur within one year of the complaint filing date. Texas' complaint investigation and resolution program still fails to meet Title XI's requirements regarding timely complaint processing.

Necessary Action: The Board needs to obtain promptly the necessary resources to investigate and resolve those complaints outstanding for more than one year, to reduce the backlog in other complaint cases, and to investigate and resolve all complaints in a timely manner. Please continue providing an electronic copy of the complaint log quarterly to Denise Graves at Denise@asc.gov.

When we return for our 2007 field review, we expect to see a substantial reduction in the number of complaint cases more than one year old and a complaint investigation and resolution program in which complaints are investigated and resolved in a timely manner. Should we not see substantial improvement, ASC staff will recommend that the ASC consider initiating a non-recognition proceeding against Texas.

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

Previous Finding: ASC staff identified two State-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 Texas Real Estate Commission (“TREC”) Ethics and TREC Legal Update. Both courses were approved for three hours of continuing education.

In our December 23, 2005 field review letter, the ASC directed the Board to review these two courses promptly to determine their compliance with AQB criteria. If the Board determined that these two courses comply with AQB criteria, the Board was directed to document its reasoning and the number of hours approved as appraisal-related. If the Board determined that these courses did not comply with AQB criteria, the Board needed to rescind its approval of these courses.

Current Status: The Board withdrew its approval of these two courses and notified the providers of that action on January 6, 2006.

Necessary Action: None.

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

Previous Findings: ASC staff found that Texas’ regulations allowed a deferral of continuing education for certified appraisers on active duty. However, the Board and staff confirmed they had never granted such a deferral. During the November 18, 2005 Board meeting, the Board voted to draft language to amend its regulations to allow certified appraisers on active duty in the United States armed forces to be placed on Inactive status until completion of all continuing education requirements.

Current Status: During its August 18, 2006 meeting, the Board voted to publish in the *Texas Register* amendments to § 153.17(c)(2) of its regulations. The proposed amendments, if adopted,

would bring the State's regulations into compliance with AQB criteria. The Board expects to adopt the new regulations at its February 2007 meeting.

Necessary Action: Please provide ASC staff with copies of adopted amendments.

- ***New Development* - A recently adopted Board policy provides preferential treatment to Appraisal Foundation sponsors when considering educational offerings.**

The Board, at its August 2006 meeting, adopted a policy regarding implementation of Section 1103.211(c) of its enabling statute allowing the Board to grant blanket approval without review to courses offered by a national appraisal association that is a current Appraisal Foundation sponsor. ASC Policy Statement 7 provides that State agencies should avoid discriminatory practices regarding appraiser educational course providers. It further provides that State agencies should ensure that all educational providers are afforded equal treatment in all respects.

Additionally, AQB criteria require coursework for qualifying education credit to cover specific subjects and to total a specific number of hours. Blanket course approval based on the identity or nature of a course provider does not provide the necessary level of review to satisfy course quality and subject matter coverage. The Board cannot provide preferential treatment to Appraisal Foundation sponsors when considering educational offerings. Additionally, the Board must review each course, regardless of the provider, to ensure that the course meets AQB criteria.

Necessary Action: To address this concern, the Board needs to rescind its policy of blanket approval of educational offerings by Appraisal Foundation sponsors and ensure that it reviews all education offerings for conformance to AQB criteria.

If you wish to respond to our findings, please do so within 60 days from the date of this letter. 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 follow-up 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,

Ben Henson
Executive Director

cc: Wayne Thorburn, Commissioner