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Appraisal Subcommittee

Federal Financial Institutions Examination Council

June 2, 1998

Elissa Rock Runyon, Chairman
Virgin Islands Real Estate Appraisers Board
Department of Licensing and Consumer Affairs
Charlotte Amalie, St. Thomas, VI 00801

Dear Ms. Runyon:

Thank you for your cooperation and your staffs assistance in the March 19-20, 1998 Appraisal Subcommittee ("ASC") review of the Virgin Islands Real Estate Appraiser Board ("Board") and appraiser regulatory program ("program").

During our review, we found serious deficiencies in the Virgin Islands' program. Many of the deficiencies were first identified in our December 10, 1993 field review letter, and remain uncorrected. These deficiencies must be resolved or we may need to consider taking administrative action against the Virgin Islands. That action would involve initiating a non-recognition proceeding under section 1118 of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("Title XI") and 12 C.F.R. part 1102, subpart B thereunder. If non-recognition were to occur, real estate lending in the Virgin Islands could be adversely affected. You need to develop an action plan to resolve these deficiencies. To assist you in this process, we have specified dates for correcting various deficiencies. If you need assistance or believe any of the dates are unrealistic, please provide us with written justification and an alternate date.

- **Board regulations have not been adopted.**

During our first review, we stated that the absence of implementing regulations very likely would jeopardize the enforceability and legally binding nature of Board actions should they be contested. The Virgin Islands' Real Estate Appraiser Licensing and Certification Act ("Act") specifically requires the Board to promulgate implementing regulations. Yet, no implementing regulations have been adopted. Our most recent review revealed that our initial concerns were justified. Our review of Board meeting minutes disclosed that at least one complaint has been placed on hold because of the lack of regulations. Section 1118 of Title XI, 12 U.S.C. 3347(b)(1), requires the Virgin Islands "to recognize and enforce the standards, requirements, and procedures prescribed pursuant to [Title XI]." The failure to adopt implementing regulations has seriously impaired the Board's ability to conform to Title XI's requirements. Moreover, the Board needs to implement in regulations the current Appraiser Qualifications Board ("AQB") appraiser qualifications criteria that became effective on January 1, 1998. Therefore, the Board must take the necessary steps to ensure that implementing regulations are adopted by November 30, 1998, or earlier. Adoption by November 30 will require that the Board begin the rule-making process immediately.

- **The Virgin Islands' \$275 temporary practice fee is excessive and burdensome.**

After our 1993 field review, we noted that this \$275 fee did not appear to be reasonable and to reflect the Board's administrative costs. Section 1122(a)(2) of Title XI, 12 U.S.C. 3351(a)(2), and ASC Policy Statement 5 specify that temporary practice fees must not be excessive, i.e., may not exceed \$150. Your \$275 fee far exceeds this amount. The Board, therefore, must reduce this fee to no more than \$150 by September 30, 1998.

- **Temporary practice permits must be valid for at least six months.**

Temporary practice permits are issued from the date the temporary practice request is approved through December 31st of the same calendar year. Consequently, temporary practice permits may be issued for periods of one day to a full year. Extensions are easily granted, providing the request is accompanied by a status report on the project. All extension requests that we reviewed were granted. Nonetheless, as set forth in section 1122(a)(2) of Title XI, and as implemented by ASC Policy Statement 5, we consider burdensome any temporary practice permit that is valid for less than six months. Therefore, the Board must ensure that each initial temporary practice permit be issued for at least six months and that at least one "easy" extension is provided. This change must be in place by September 30, 1998. We do not object to your requirement for a status report.

- **The Virgin Islands has no means of testing applicants.**

The Board's contract with Assessment Systems, Inc. to administer the appraiser examinations in the Virgin Islands expired about a year ago, and it does not appear that it will be renewed. As a result, the last exam was administered in September 1996. Two applicants currently are awaiting examination. The Board has agreed to work with the ASC staff to address this situation and promised to explore ways to provide appraiser examinations on a regular basis. An arrangement to provide testing must be in place by September 30, 1998.

- **The Board requires applicants for a reciprocal license or certification to take the Virgin Islands certification or licensing examination.**

While the Board has the statutory authority to accept an examination successfully taken in another State, it does not accept such examinations. All appraisers applying for a reciprocal license or certification must retake the Virgin Islands' corresponding examination. (This requirement is especially troublesome because the Virgin Islands has not been able to offer examinations, as discussed above.) Consistent with Title XI and ASC Policy Statement 6, the Board, at the very least, should waive the examination requirement if the appraiser has taken and passed an examination approved by the AQB. The Board should end its re-examination policy immediately. And, as stated in our 1993 field review letter, we again encourage you to develop reciprocal agreements that readily authorize appraisers who are licensed or certified in good standing in another State or Territory to perform appraisals in the Virgin Islands.

- **Dates on licenses and certificates have been backdated.**

The effective dates on licenses and certificates are backdated to January 1st of the calendar year, even though the licenses or certificates are issued or renewed months later. We understand

that, under Virgin Islands' law, persons obtaining or retaining professional licenses must prove that no outstanding tax obligations for the previous calendar year exist. This tax clearance process often takes months and the Board developed this backdating procedure, in part, to compensate for this delay. Unfortunately, appraisers apparently have come to rely on this procedure and some have been very lax about renewing their licenses or certificates on a timely basis. Renewal forms sometimes are not submitted until mid-year or later.

Title XI requires that only State licensed or certified real estate appraisers perform appraisals in connection with federally related transactions. Persons performing such appraisals on the basis of an expired license or certification, and financial institutions using the services of those persons, appear to be violating Federal law. Even if the backdating procedure were viewed to validate prior work, the procedure becomes more problematic if the Board later were to deny the initial or renewal application. The Board must cease this practice immediately.

During its March 20, 1998 meeting, the Board voted to notify all license and certificate holders of this change in policy and advise them of their obligation to renew credentials and resolve any tax obligations on a timely basis or risk being charged with practicing without a valid credential. We support this Board decision. Please provide us a copy of the notification to your appraisers.

- **The Virgin Islands must submit National Registry information on a monthly basis and remit payment of the invoiced amount in a timely manner.**

Under Title XI and ASC Policy Statements 8 and 9, the Virgin Islands is required to submit a full listing of licensed or certified appraisers each month. Our Invoice No. VI-98-001, which was generated from your January 1998 data submission, states that the Virgin Islands owes \$4,450 in National Registry fees. The Board must ensure that these fees are sent to us by June 30, 1998. Additionally, the Board must develop and implement procedures by June 30, 1998, to ensure that a complete listing of licensed or certified appraisers and disciplinary actions, if applicable, are provided to us on a monthly basis. Appraisers not identified on the Registry are not eligible to perform appraisals in connection with federally related transactions. Prompt and consistent reporting is critical to the accuracy of the Registry.

- **The Board needs to take steps to ensure that its decisions and actions are objective.**

It appears that some Board decisions to award appraiser credentials were unduly generous in crediting qualifying experience or education to applicants and were based, in part, on subjective considerations. To ensure equal treatment for all appraiser applicants, the Board needs to weigh each application on objective factors only. We note that, for the first time since its inception, the Board received the assistance of legal counsel during the Board meeting that we attended. During our review, we were informed that legal assistance now would be provided to the Board on a continuous basis. We anticipate that the active participation of legal counsel in the Board's deliberations and actions will assist the Board in meeting this recommendation.

- **Virgin Islands law requires that applicants obtain experience within two of the five years immediately preceding the date of application.**

The ASC views such restrictions as potentially unfair or discriminatory against appraisers who may be working in a supervisory capacity or in positions at government agencies. These

often highly qualified individuals would be disqualified from appraising in the Virgin Islands because they would not have recent appraisal experience. We recommend, therefore, that the Board eliminate the five-year experience restriction. We note that the AQB considered, but rejected, such a requirement.

- **The Board does not receive adequate funding for Board meetings, training and educational purposes and equipment.**

We understand that, until March 1997, no Board member knew that the Board had a designated financial account. In fact, many Board members were not aware of the existence of this account until the Board meeting that the ASC staff attended during the field review. Consequently, Board meetings have been conducted via conference calls and members of the Board or its staff have rarely attended regional and national appraiser-related conferences. We believe that enabling the Board members to meet face-to-face, attend training sessions (particularly those conducted by the ASC and State appraiser regulatory organizations) and exchange ideas and solutions with other State regulators is very beneficial. We encourage the Department and the Board to obtain adequate budgetary funding so that the Virgin Islands Board and staff may attend meetings in person and have a presence at these conferences.

The ASC believes that the deficiencies noted in this review, particularly those that were cited in our previous review and not corrected, are serious. These deficiencies must be resolved by the dates specified or, by November 30, 1998, if no date is specified, or we may consider initiating non-recognition proceedings under Title XI. We, therefore, require a response to our findings and recommendations by June 30, 1998, and a monthly status report thereafter. The initial response will include an action plan to cure each deficiency. If we do not receive payment of the Registry fees by June 30, 1998, we will have no alternative other than to inform the Federal financial institution regulatory agencies that appraisers licensed or certified by the Virgin Islands are not eligible to perform appraisals for federally related transactions. Those agencies, in all likelihood, would notify their regulated financial institutions about this fact. Additionally, we plan a return visit to the Virgin Islands during the later part of 1998 to evaluate your progress toward correcting the noted deficiencies. Finally, we suggest that you contact the Association of Appraiser Regulatory Organizations, to which you belong, for assistance in addressing the matters discussed in this letter.

Please note, we consider this field review to be an open matter. After receiving your response or after June 30, 1998, whichever is earlier, this letter and any related 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.

Sincerely,

Herbert S. Yolles
Chairman

cc: Lisa Davis, Assistant Commissioner