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Appraisal Subcommittee
Federal Financial Institutions Examination Council

February 25, 2008

Ms. Nikole Urban, Administrative Director
Real Estate Appraiser Commission
Department of Commerce and Insurance
Division of Regulatory Boards
500 James Robertson Parkway, Suite 620
Nashville, TN 37243-1150

Dear Ms. Urban:

Thank you for your cooperation and your staff's assistance in the November 1, 2007 Appraisal Subcommittee ("ASC") follow-up review of Tennessee's appraiser regulatory program ("Program"). In our April 20, 2007 field review letter, we notified the Tennessee Real Estate Appraiser Commission ("Commission") that Tennessee's 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 corrective action. During our follow-up review, we focused on these four concerns.

As discussed in more detail below, you resolved three of our concerns and made significant progress towards addressing the remaining issue, which related to the timely investigation and resolution of complaints.

Previous Findings, Current Status, and Action

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

Previous Finding: As shown in the chart below, during our last field review, we found Tennessee's complaint investigation and resolution performance diminished since 2004, when the ASC again cited the State for not investigating and resolving complaints in a timely manner, as required by ASC Policy Statement 10 E.

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. While on-site, we learned that the Commission and its new staff and attorney were aware of the backlog of aged complaints and appeared committed to working together to identify ways to expedite the investigation/resolution process.

The complaint and resolution process also was deficient in other ways. Enforcement files lacked sufficient documentation, and disciplinary sanctions did not always appear consistent with other evidentiary information in the file. The ASC cited the State for these same deficiencies in 2004. The Commission responded to that 2004 finding by including in each resolved complaint file the appropriate page from the Commission's meeting minutes. The minutes, however, only relayed the nature of the complaint and the Commission's resolution; no other information was included. That lack of information made it difficult for us to determine from the files whether the Commission's actions were reasonable and equitable.

We, therefore, directed the Commission to:

1. Comply with ASC Policy Statement 10 E. 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. Comply with Policy Statement 10 E. by ensuring that each complaint file contains all relevant documentation to support the facts, determinations, and underlying reasons for those determinations;
3. 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 items one and two above; and
4. Continue providing quarterly complaint logs to ASC staff.

Current Status: Since our December 2006 field review, the Commission has significantly improved the timeliness of investigating and resolving complaints. During the ten months since our field review, the Commission took positive steps towards eliminating the complaint backlog. First, the Executive Director worked to secure the services of a dedicated attorney and investigator for the appraiser regulatory function. Second, the Executive Director and the attorney reviewed all outstanding cases to determine the most appropriate manner of investigation and/or disposition. Third, the staff then worked to resolve the oldest cases first. Finally, the staff established a contract with an expert witness and conducted enforcement hearings each month in an effort to resolve cases more expeditiously. In addition, the Executive Director identified other time saving procedures, such as transmitting information to the appropriate parties via email to eliminate the time delays of traditional mail.

The following is a summary of complaint information. The State resolved all but two of the aged cases identified during the last field review. Currently, of the eight dated cases, two are from 2004 and six are from 2006. All eight cases are scheduled for formal hearing in early 2008. We note that the State made significant progress notwithstanding a considerable increase in the number of complaints received annually.

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%)
Jan 2007- Oct 2007	90 (10 months)	63	8 (13%)

While on-site, ASC staff reviewed eight complaint files closed since our December 2006 field review and four open cases. We found that the files were well documented, investigations thorough, and case summaries comprehensive. Dispositions also appeared to be fair and equitable.

While the Commission has made significant progress towards alleviating our concern, and we expect that the State will continue to do so, the percentage of complaints outstanding for more than one year still remains unacceptably high.

Necessary Action:

To address the concern, the Commission needs to:

1. Continue providing us quarterly complaint logs; and
 2. Continue its efforts towards reducing the backlog of aged complaints and attaining compliant with ASC Policy Statement 10 E.
- **Complaint files lacked adequate documentation regarding the Commission's reasons underlying its final decisions.**

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

During the last 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 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 recognized 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.

Current Status: Program staff reviewed all enforcement files and ensured that each file contained information regarding its final disposition and other supporting documentation. Staff also established a new file organization system that clearly organized material in binders chronologically, by the type of document. Legal reports included a "Recommendation and Reasoning" section that provided the final disposition and a full explanation underlying the Commission's action. The Commission was encouraged by the Executive Director and legal counsel to use more uniform descriptions in future cases to help promote consistency of treatment.

The Commission's range of sanctions also began to include revocations and suspensions. Since the December 2006 field review, the Commission suspended three credentials and accepted four voluntary surrenders in lieu of disciplinary action. These actions were reported to the National Registry as required by ASC Policy Statement 9 B. The Commission is seeking to revoke several appraisers' credentials and have scheduled formal hearings in those cases.

Necessary Action: None.

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

Previous Finding: 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. We reviewed 30 temporary practice applications and found that one-third (10) were not issued within the required time frame.

The delays were attributed to the fact that another State entity, the Revenue Department, received temporary practice applications and processed temporary practice fees before forwarding the applications to Commission staff. That Department took, on average, four days to process the fees and forward the applications.

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

We directed the Commission to ensure that completed temporary practice applications are processed within five business days of receipt by the State, as required by ASC Policy Statement 5.

In its June 5, 2007 response to our field review letter, the Commission stated it could not cure this deficiency because it was “out of our control.” It noted that temporary practice fees must be processed first by the State’s cashier’s office or the revenue department. These offices sometimes take more than five days to deliver the paid applications to the Commission’s office. The Commission stressed that the failure to issue permits within five business days was infrequent. Our August 13, 2007 reply stated that this position was unacceptable.

Current Status: While on-site, ASC staff reviewed the twenty temporary practice applications received during the ten months since the ASC’s last field review. The deficiency appeared to have been corrected. Nineteen of the applications reviewed took five days or less to process. The remaining applicant had been disciplined by another State, and that appraiser’s application went before the Commission for its consideration before the staff issued the permit to the appraiser. That action was appropriate.

Since its receipt of field review letter, the Commission’s Executive Director wrote the Assistant Commissioner of the Department of Commerce and Insurance (“Department”) regarding this matter. The Assistant Commissioner authorized the Executive Director to change the delivery method of temporary practice applications. All temporary practice applications now come directly to the Commission’s office first for processing. The staff immediately revised all temporary practice applications to include the new application directions. The Department is working ways to streamline the fee payment process and is considering implementing the ability to file temporary practice requests online and to pay the required fee with a credit card.

Necessary Action: None.

- **The Commission’s regulations did not conform to AQB criteria.**

Previous Finding: In our 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 instructor. And, second, the regulations continued to allow experience credit for textbook authorship and publishing journal articles. The regulations needed to be amended to ensure that they conform to AQB criteria and to avoid conflicts between law and practice.

When we discussed this situation with the Commission and its staff, we were informed that these provisions will be removed from the regulations when the State adopts regulations implementing the 2008 AQB criteria. At that time, the Commission expected to distribute proposed regulations for public comment during spring 2007, and anticipated their adoption by fall of 2007, with an effective date of January 1, 2008.

Current Status: During the current field review, we found that the Commission’s regulations still contained these provisions. We determined, however, that the Commission has been operating in conformance with AQB criteria. On May 16, 2007, the Commission conducted a rulemaking hearing and approved the new regulations. These regulations corrected inconsistencies with existing AQB criteria. These regulations also incorporated the AQB’s 2008 criteria changes. The regulations’ effective date was January 1, 2008

Necessary Action: None.

Conclusion

Tennessee corrected all deficient areas and currently functions in a manner which is consistent with Title XI. While the State continues to have some dated cases, all are well on the way to resolution. Moreover, the staff is committed to ensuring complaint disposition are more timely in the future.

If you wish to respond to our comments, 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,

Marc L. Weinberg
Acting Executive Director &
General Counsel

cc: William Flowers, Jr., Commission Chair