

■ ■ ■ ■ ■ ■

Appraisal Subcommittee

Federal Financial Institutions Examination Council

December 14, 2005

Mr. D. Rex Bryce
Chair, Board of Real Estate Appraisers
and
Mr. Albert Jurczynski
Deputy Secretary of State
Department of State
84 Holland Avenue
Albany, NY 12208-3490

Dear Mr. Bryce and Mr. Jurczynski:

Thank you for the cooperation and assistance of the Board of Real Estate Appraisers (“Board”) and the Department of State (“Department”) in the September 20-22, 2005 Appraisal Subcommittee (“ASC”) review of New York’s appraiser regulatory program (“Program”).

We were pleased to find that the Board and Department had successfully addressed most of the concerns identified during our 2004 field review. We appreciate your efforts in dedicating the time and resources to bring New York’s Program closer to compliance with Title XI of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, (“Title XI”). During our current field review, we identified two concerns that need to be resolved to bring the Program into substantial compliance with Title XI.

- **A number of complaint cases have been outstanding for more than one year.**

After our June 2004 field review, we noted that complaint investigation and resolution program was not effective because complaints were not investigated and resolved in a timely manner as required by ASC Policy Statement 10. During our last field review, the ASC staff noted that the Board and Department had significantly changed the complaint handling procedures since 2004. These changes have led to improvements in complaint processing efficiency and effectiveness. Specifically, we noted improvements in the Department’s ability to locate complaint files and use of the automated complaint tracking system. Also, it appears that the Board’s legal counsel began aggressively pursuing settlement agreements and setting hearing dates. As a result, even though the Department and Board continue to receive eight and ten complaints per month, the number of complaints more than one year old has been reduced by nearly half. We encourage the Department, Board, and legal counsel to continue providing necessary resources to ensure timely complaint dispositions.

One recent development causes us concern. One of the two administrative law judges (“ALJ”) in the Department recently resigned. It is our understanding that all previously scheduled hearings for this ALJ are on hold until the position is filled. We encourage you to facilitate your efforts to fill this vacancy as quickly as possible or, if necessary, consider alternatives to ensure that the vacancy does not adversely affect New York’s ability to bring complaint cases to closure.

As noted in previous correspondence, an effective and timely complaint investigation and resolution program is essential to Title XI compliance. Please provide us with quarterly complaint logs beginning December 31, 2005, so that we can continue to monitor your progress.

- **New York's continuing education affidavit process has begun to experience unacceptably high failure rates.**

New York requires renewing appraisers to submit affidavits attesting to the required hours of continuing education. Although discontinued for a time, the Department resumed its audit program in September 2004. The Department audits the continuing education claims of approximately 40 renewing appraisers each month. At the time of our January 2005 follow-up review, these audits revealed that approximately 8% of the audited appraisers were unable to support their affidavits with education documentation. At the time of our current field review (September 2005), the failure rate had increased to approximately 26%. The Department audited 311 of 1,371 certified appraisers who renewed between September 2004, and August 2005. Eighty of these appraisers were unable to provide documentation to support their affidavits. While the Department and Board have initiated and/or completed appropriate disciplinary actions against these appraisers, the failure rate calls into question whether an affidavit process is an acceptable alternative.

ASC Policy Statement 10 provides specific provisions regarding the acceptability of affidavits for certified appraisers. The 26% failure rate experienced by New York during the 11 months preceding our field review significantly exceeds Statement 10's tolerance of 10%. We understand that Department Director Joseph Amello reviewed Policy Statement 10 and agreed to publish in a newsletter the names of appraisers who failed the audits and the associated monetary penalties. The Department will distribute the newsletter to all licensed, certified, and registered appraisers in November 2005, and quarterly thereafter. The newsletter also will appear on the State's Web site. This approach is consistent with Policy Statement 10 and, hopefully, will prove an adequate deterrent to appraisers who might falsify their affidavits. We remain concerned, however, about the acceptability of New York's affidavit process.

Please provide us a copy of the November 2005 newsletter and all subsequent quarterly newsletters identifying the non-compliant appraisers. Within 15 days of the end of the calendar quarter ending March 31, 2006, and June 30, 2006, please provide us a report detailing the results of your ongoing continuing education audit program for the quarter just ended. Following the report for the quarter ending June 30, 2006, we will evaluate whether New York's remedial actions have been adequate to support the continued acceptance of the affidavit process. If the remedial actions have not had the desired effects, New York will have to complete audits on 100% of appraisers who renewed certified credentials from September 2004 onward. Additionally, we might determine that New York will need to abandon its affidavit process.

Please respond to our findings and recommendations within 60 days from the date of this letter. Until the expiration of that time 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 any questions.

Sincerely,

Virginia M. Gibbs
Chairman