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# Appraisal Subcommittee

*Federal Financial Institutions Examination Council*

April 7, 2009

Bob Clark, Director  
Office of Real Estate Appraisers  
1102 Q Street, Suite 4100  
Sacramento, CA 95814

Dear Mr. Clark:

Thank you for the February 11, 2009 response to the Appraisal Subcommittee's (ASC) December 22, 2008 Field Review letter regarding the July 29-31, 2008 Field Review of California's Office of Real Estate Appraisers (OREA) regulatory program (Program). The response addresses the areas of concern outlined in the Field Review letter.

**1. California's complaint investigation and resolution process does not comply with Title XI and ASC Policy Statement 10.**

OREA's complaint, investigation, and resolution processes do not comply with Title XI and ASC Policy Statement 10E because not all complaints are investigated and resolved in a timely manner. Based on log entries, it appeared at the Field Review that complaints were not timely assigned. The response states that complaints are assigned immediately, but then await action by the Investigator, which can take some time due to resource issues. Although the ASC appreciates the process clarification, it does not change the ASC's position that cases are not closed timely.

The ASC is encouraged by the state's actions to remedy this concern. Recognizing the need for the implementation of improved efficiencies, the state is seeking approval and, contingent on approval, hiring 3 additional full-time Property Appraiser Investigators and a staff legal counsel. Should these improvements occur, a decrease in the number of complaints older than one year is expected at the next Field Review. However, these improvements to the Program do not address cases referred to the Office of the Attorney General (AG), where numerous cases had no action taken for twelve to seventeen months.

The ASC is aware that the AG's Office is not under OREA's control or direction and it may have different priorities. But the AG's Office is a part of OREA's complaint investigation and resolution processes, and as such is part of California's Program under Title XI. Therefore, the ASC expects demonstrated improvement to this portion of the Program.

In reference to bringing cases to a final resolution within one year, the response states that "The word 'should' is not as affirmative as 'must'...and OREA questions if the one-year requirement is absolute or definitive....Further, OREA interprets the term 'special

circumstances' to include the judicial process that results from a disciplinary case wherein there is a referral to the Office of the Attorney General.”

The ASC adopted Paragraph E of ASC Policy Statement 10 to help ensure that states have effective enforcement programs. In that paragraph, the ASC stated that each state needs to ensure that its entire system for processing and investigating complaints and sanctioning appraisers is administered in an effective manner. Timeliness in resolving complaints is a central aspect of that effectiveness. The Policy Statement recognizes that fact by requiring state agencies to process complaints of appraiser misconduct or wrongdoing on a timely basis. California's failure to do so brings into question the OREA's overall ability to supervise its appraisers as contemplated by Title XI.

To help measure timeliness, the ASC placed the following flexible guideline within paragraph E. “Absent special documented circumstances, final State agency administrative decisions regarding complaints should occur within one year of the complaint filing date.” In other words, states *should* aim at finally resolving each complaint within one year of its filing dates. Even if a complaint were not resolved within one year of receipt, the state may have “special circumstances” for not doing so. The ASC routinely recognizes various special circumstances such as: an appeal to an appellate court within a state's judicial system; a state agency holding a case pending the resolution of a criminal case against the respondent arising out of the same circumstances; and the serious illness of the respondent. This one-year time frame, therefore, is a flexible standard by which the ASC measures the state's ability to effectively supervise its appraisers. The word “should” does not alleviate a jurisdiction's responsibility to resolve complaints within this specified one-year period. The ASC hopes that this clarifies OREA's misinterpretation of Policy Statement 10E.

Please provide the quarterly complaint log, listing all complaints closed on or after June 1, 2008 and all pending complaints commencing with the second quarter (April, May, and June) of this year, 2009. Please submit electronically to California's Policy Manager (PM) [neal@asc.gov](mailto:neal@asc.gov) in a spreadsheet format. The ASC will expect the first log to be received the first week of July, 2009.

**2. OREA's Temporary Practice procedures do not conform to Title XI and ASC Policy Statement 5.**

During the July, 2008 Field Review, the PM identified that Temporary Practice Permits expired upon the expiration of the credential holder's home state certification. Therefore it is possible for a permit to be issued for less than 6 months. In the event that the home state certificate expired in less than 6 months, it was communicated to the PM that a new application and fee would be required to issue an extension or subsequent permit. This would not only be burdensome but would also bring the fee above the \$150.00 limit.

The response states that the current process does not charge any additional fee beyond the \$90.00 initial permit fee and that a permit holder whose home state credential expires need only show proof of the home state credential renewal in order to facilitate an extension. This process described in the response complies with Policy Statement 5. However, there is the outstanding issue of correcting the code reference in OREA policy

number 95-3019. Therefore, please forward the amended policy to California's PM, Neal Fenochietti at the below address or email to [neal@asc.gov](mailto:neal@asc.gov) .

**3. California's practice of allowing tax assessors to be granted appraiser credentials without documented conformance to AQB experience criteria is inconsistent with ASC Policy Statement 10F.**

While on-site, the PM discussed with staff the process for evaluating experience for compliance with AQB Criteria. The PM was informed that prior to 2005, OREA required all applicants, *except tax assessors*, to submit appraisal logs that listed all appraisal assignments for which applicants were claiming credit. The state evaluated the log to determine whether the applicant obtained the necessary experience.

OREA followed a different process for tax assessors who applied to become certified real estate appraisers. OREA allowed tax assessors to provide an affidavit certifying the appraiser's tax assessing experience. OREA staff reported that after attending an AARO conference in 2005, where tax assessor experience was a discussion topic, they decided to change the process for reviewing such experience and consequently would no longer allow the use of affidavits. However, based on the files, it was apparent that the process had not changed.

The response confirms that this was indeed the case and that OREA will take the steps described in the ASC Field Review letter of December 22, 2008. However, OREA insists that the applicants identified during the July 2008 Field Review were not representative of the agency's current practice and that possibly these candidates were not issued credentials. Nevertheless, OREA will review all licensing files and identify those individuals whose credentials were based on tax assessor experience. Those files will be reviewed to ensure compliance with AQB criteria and Policy Statement 10F. Any license or certificate holders who ultimately fail to meet the experience requirement will be listed on the National Registry "unknown" for Appraiser Qualifications Board (AQB) compliance.

OREA will be required to recall the affected credentials of each certified appraiser and over-stamp or reissue them with wording similar in meaning to: "Not eligible to appraise federally related transactions." The certified appraiser's record on the National Registry would be changed from "Active" to "Inactive." With regard to licensed appraisers, OREA will be required to provide a listing to ASC staff identifying each licensed appraiser by name and credential number. Those licensed appraisers will be listed on the National Registry as "non-AQB compliant" but their record will remain Active.

The response correctly confirms that the ASC will be provided with a spreadsheet of all appraisers that have been identified as being licensed or certified based on mass appraisal experience and the status of each resulting from this action plan. The date initially given for OREA to provide this list was June 30, 2009. However, since the July 2008 Field Review, a June 2009 Field Review has been scheduled to begin on June 15, 2009. Therefore ASC staff will review the status of this concern at that time.

**4. OREA did not report all disciplinary actions to the ASC for inclusion on the National Registry.**

The response confirms that OREA will submit a report of all disciplinary actions (public and private) taken against California appraisers. This report will contain actions not previously provided to the ASC because OREA considered them private. The ASC will have this report no later than April 30, 2009.

In the future these actions should be reported immediately. Other state appraiser regulatory programs rely on the National Registry records when checking into the history and status of an applicant. It is of the utmost importance that the National Registry contain the most recent data possible.

Please be advised that the Field Review letter, the response, and any other previous correspondence between the ASC and the Department regarding the Field Review are now publicly available on the ASC web site.

If you have any questions or require further information or clarification, please contact Neal Fenochietti, Regulatory Policy Manager. Mr. Fenochietti can be reached at 202-834-0485 or [neal@asc.gov](mailto:neal@asc.gov).

Sincerely,

James R. Park  
Executive Director

cc: Gillian Friedman, Attorney General's Office