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Appraisal Subcommittee

Federal Financial Institutions Examination Council

December 22, 2008

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

Dear Mr. Clark:

Thank you for your cooperation and your staff's assistance in the July 29-31, 2008 Appraisal Subcommittee ("ASC") review of California's Office of Real Estate Appraisers (OREA) appraiser regulatory program ("Program").

Based on our review, we find that California's Program does not comply with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (Title XI). The state failed to: (1) investigate and resolve complaints in a timely manner; (2) issue temporary practice permits for a minimum of six months with an easy extension; (3) ensure that appraiser credentials issued to tax assessors are supported by experience that conforms to Appraisal Qualifications Board (AQB) Qualification Criteria; and (4) report all disciplinary actions to the ASC for inclusion on the National Registry. To closely monitor your progress in resolving these concerns, we will conduct a field review in approximately one year.

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

While we found that complaint files were well documented and disciplinary actions were consistent, the state failed to timely investigate and resolve complaints, which should typically be completed in one year.

Given that the resolution of a complaint is in part dependent upon legal resources of the Attorney General's (AG) office, OREA staff agreed with our request to have a representative from the AG's Los Angeles office participate in the ASC review. During the discussion with ASC staff, the AG representative acknowledged that she was not aware of the federal oversight of states' appraiser regulatory programs, the one-year time frame for complaint investigation and resolution, nor the consequences of a state's failure to comply with Title XI and ASC Policy Statements.

While on-site, we reviewed 33 closed cases and found that a case would typically sit dormant for months. Delays most often were caused by: (1) failure to timely assign an investigator; and (2) failure to timely assign an attorney from the AG's Office to the case.

We reviewed activity logs on twenty of the oldest cases that were open and pending investigation and found the following:

- Seven cases took between seven and twelve months to be assigned to an investigator;
- Two cases took over one year to be assigned to an investigator;

- One case took three months to be assigned to an investigator; and
- Ten cases were over one year old and had not been assigned to an investigator.

We reviewed a report on 65 cases that were referred to the AG's Office for disciplinary action, after an investigation was completed, and found the following:

- Seven cases had been assigned to the AG's Office for twelve to seventeen months with no action;
- Ten cases had been assigned to the AG's Office for six to eleven months with no action;
- Seventeen cases had been assigned to the AG's Office for one to five months with no action;
- Four cases took twelve to seventeen months before significant work was first reported;
- Eleven cases took six to eleven months before significant work was reported; and
- Seventeen cases took one to five months before significant work was reported.

To resolve this concern, the OREA and the AG's Office need to:

1. Develop and implement specific plans to reduce the backlog of outstanding complaints and to process all complaints on a timely basis, and inform us in writing of those plans no later than 60 days after receiving this letter; and
2. Provide an electronic quarterly complaint log to the ASC.

Participation by key personnel, especially staff from the AG's Office, in ASC Field Reviews is critical to resolving concerns about the state's compliance with Title XI. Though this has not been the case in the past ASC reviews, the ASC recommends that future participation by the AG staff during ASC reviews would help to resolve these issues.

- **OREA's temporary practice procedures do not conform to Title XI and ASC Policy Statement 5.**

ASC Policy Statement 5 requires states to issue temporary practice permits for a minimum of six months with the ability for the permit recipient to obtain one easy extension. The total charge imposed for the permit and extension may not exceed \$150.

During the review, we found that OREA issued temporary practice permits for one year with a fee of \$150. However, if the appraiser's home state credential expired within that year, the expiration date of the OREA- issued temporary practice permit coincided with the home state's expiration date. During this review, we discovered that in several cases, temporary practice permits were issued for less than six months because of the expiration date of the appraiser's home state credential. Though to date no appraiser has requested an extension, OREA staff stated that it would charge another \$150 and require the appraiser to file a new application to extend the permit.

To resolve this concern, OREA needs to revise its procedures for the issuance of temporary practice permits. When an appraiser's home state credential expires during the temporary

practice period, OREA should permit an appraiser to renew without excessive burden after he/she demonstrates renewal of the home state credential. Please provide us with documentation on the procedural changes with your response letter.

- **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, we discussed with staff the process for evaluating experience for compliance with AQB Criteria. We were 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. Prior to our field review, OREA staff reported that after attending an AARO conference in 2005, where the tax assessor experience was a discussion topic, they decided to change the process for reviewing tax assessor experience and would no longer allow the use of affidavits. Based on our review of the files, however, we found the process had not changed.

We randomly selected and reviewed the files of nine applicants for licensure or certification with assessment experience that were issued credentials. One application for a certified general credential, dated November 20, 1995, demonstrated that affidavits were once accepted, as the OREA staff stated. The application contained a statement from a county assessor explaining the applicant's employment history, position, and duties for the time spent appraising properties for *ad valorem* tax purposes. The appraiser provided a log simply stating the total number of hours claimed for the 18-year period that the applicant worked in the County Assessor's Office.

The remaining eight application files were processed between April 2006 and December 2007. Four licensed candidates submitted affidavits to attest to the experience claimed and contained a statement from a County Chief Appraiser or immediate supervisor. The statements explained the applicant's employment history, position, and duties during the time spent appraising properties for *ad valorem* tax purposes. The applicants provided a non-property specific log simply stating the total number of hours claimed. We found that the remaining four applications, two for the certified residential level and two for the licensed level, contained logs which appropriately identified the dates, properties, and other required information. However, OREA staff did not review work product for two of these candidates.

Beginning with the March 27, 1991 AQB Criteria, certified appraiser credentials issued by a state had to be supported by experience that met AQB Criteria. For the recognition of mass appraisal experience, the experience had to comply with USPAP Standards Rule 6. Standards Rule 6, then and now, was directed toward the substantive aspects of developing and communicating credible analyses, opinions, and conclusions in the mass appraisal of properties. Because the AQB did not establish a time threshold regarding when this provision became effective, mass appraisal experience, regardless of when it was earned, had to comply with Standards Rule 6.

In granting credentials, OREA did not document whether applicants' experience conformed to AQB Criteria. Since 1991, certified appraiser credentials issued by a state have to be supported by experience that meets AQB Criteria. Moreover, for a state to recognize an applicant's mass appraisal experience, the experience had to comply with USPAP Standards Rule 6. California's acceptance of experience affidavits also conflicts with ASC Policy Statement 10. On August 4, 1993, the ASC adopted the *ASC Policy Statements Regarding State Certification and Licensing of Real Estate Appraisers*. ASC Policy Statement 10B addressed the issue of validating experience claimed by appraiser applicants. At that time, the paragraph stated that "State agencies, at a minimum, should have a reliable means of validating both education and experience credit claimed for certification or licensing." The policy statement further provided that, "the lack of routine verification procedures is both an invitation to potential fraud and a threat to the integrity of a State's appraiser regulatory program." Effective January 1, 2005, the ASC added paragraph F, which prohibits states from accepting experience-related affidavits from applicants for certification.

To resolve this concern, OREA needs to take the following steps:

1. Immediately cease awarding certified credentials to applicants relying on mass appraisal experience, unless that experience conforms fully to the AQB's experience requirements for certification and ASC Policy Statement 10F;
2. Identify, since the inception of the Program, all appraisers who were issued appraiser credentials supported by mass appraisal experience;
3. Determine whether the file for each appraiser identified in step two contains documentation to support conformance to AQB Criteria and ASC Policy Statement 10;
4. For all appraisers determined to be deficient in step three, send a letter requesting documentation of USPAP compliant appraisal experience obtained since being issued an appraiser credential sufficient for the credential level held; and
5. Determine whether any of the appraisers identified in step three failed to document AQB-qualifying experience for the credential held. If so:
 - a. For each certified appraiser who fails to document the needed experience, begin the necessary steps to downgrade that appraiser to the licensed level. Also, provide a listing to ASC staff identifying each appraiser by name and credential number. Those licensed appraisers would be listed on the National Registry as "non-AQB compliant." Alternatively, OREA could recall existing certifications and conspicuously over stamp them with wording similar to "Not eligible to appraise federally related transactions." In this case, the appraiser's record on the National Registry would be changed from "Active" to "Inactive;" and
 - b. For each licensed appraiser who fails to document the needed experience, provide a listing to ASC staff identifying each appraiser by name and credential number. Those licensed appraisers will be listed on the National Registry as "non-AQB compliant."

Within 180 days from OREA's receipt of this letter, we expect OREA to complete steps one through five, and to send the ASC a spreadsheet listing all appraiser identified in step one, and include each appraiser's status relative to this action plan.

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

ASC Policy Statement 9A requires state agencies to expeditiously report to the ASC any disciplinary actions taken against appraisers. During the field review, ASC staff found that many disciplinary actions taken by the state as reflected in the enforcement log provided by OREA staff were not listed on the National Registry. We discussed this concern with OREA staff and requested a report of all disciplinary actions taken against appraisers. OREA staff provided a report showing all disciplinary actions that had been taken since the inception of the Program. It differed significantly from actions contained on the National Registry.

OREO staff agreed to review their process and ensure all disciplinary actions involving California credentialed appraisers are reported to the National Registry. We realize that, since the field review, you continued to work with ASC staff to determine what actions need to be reported on the National Registry. You stated that under the past administration, California considered many types of disciplinary actions as non-public and, therefore, not reported to the ASC. However, based on further discussion with ASC staff, you have agreed and indicated that you will be requiring OREA staff to report all disciplinary actions (both public and non-public) to the ASC for reporting in the National Registry.

Therefore, in summary, OREA needs to continue its efforts to:

1. Ensure that all disciplinary actions relating to all California credentialed appraisers, past and present, are reflected in the National Registry; and
2. Develop and implement procedures to ensure that all disciplinary actions are reported to the ASC pursuant to Policy Statement 9A, and, within 60 days from the date of our field review letter, forward to ASC staff a copy of those procedures.

- **Some of California's administrative rules were inconsistent with AQB criteria.**

A review of the state's administrative rules revealed some inconsistencies with AQB Criteria. We realize that California is in the process of drafting proposed regulatory changes aimed at correcting those inconsistencies. We provided the OREA staff with the specific sections and noted that in practice, California had not enforced the questioned regulations, but needed to make the proper amendments to the regulations to avoid conflicts between its rules and practice.

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