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Appraisal Subcommittee

Federal Financial Institutions Examination Council

December 22, 2008

Ann McDermott, Administrator
Real Estate Division
Department of Business and Industry
788 Fairview Drive, Suite 200
Carson City, NV 89701-5453

Dear Ms. McDermott:

Thank you for your assistance and that of the staff of the Real Estate Division (“Division”) of the Department of Business and Industry (“Department”), and the Commission of Appraisers of Real Estate (“Commission”) during the June 16-19, 2008 Appraisal Subcommittee (“ASC”) review of Nevada’s appraiser regulatory program (“Program”).

As discussed in more detail below, because of the state’s serious, longstanding inability to investigate and resolve appraiser-related complaints in a timely manner, the state has failed to adequately supervise its appraisers as required by Title XI of the Financial Institutions, Reform, Recovery, and Enforcement Act of 1989, as amended (“Title XI”) and ASC Policy Statement 10 E, there under. As a result, if the state does not cure this deficiency in a timely manner, the ASC staff may recommend the ASC initiate a non-recognition proceeding against Nevada under § 1118 of Title XI, 12 U.S.C. 3347, and 5 CFR part 1102, subpart B. The state also needs to amend its statute regarding reinstatement to ensure compliance with Appraiser Qualifications Board (“AQB”) criteria and amend several sections of its regulations to correct and clarify references made.

We are particularly troubled that your complaint investigation and resolution program has deteriorated since our previous field review. We will closely monitor your efforts to remedy these deficiencies throughout the year and will return in approximately 12 months to perform a field review of Nevada’s Program.

- **Nevada’s complaint investigation and resolution process did not comply with Title XI and ASC Policy Statement 10E.**

Nevada’s complaint investigation and resolution process did not comply with Title XI and ASC Policy Statement 10E. ASC Policy Statement 10E provides that state agencies need to process complaints on a timely basis, and that, absent special documented circumstances, final state administrative decisions regarding complaints should occur within one year of the complaint filing date. This concern was addressed in our June 2000, June 2003 and September 2006 field review letters.

While we found investigative files well documented and enforcement actions equitable and sufficiently supported, the timeliness of Nevada’s complaint investigation and resolution program worsened since our previous field review. Nevada had 154 outstanding complaints, 98 of which had been outstanding for more than one year, compared to our last review in which the 86 complaints were outstanding with 31 in process over a year. The Appraisal Officer had

requested a legal opinion to determine what legal options are available to dispose of one case involving an individual who moved out of the country. This case falls within the “special documented circumstances” and lowers the number of aged cases to 97. All of the 97 aged cases were received within the last two and a half years.

The Commission and staff attributed the decline of complaint investigation and resolution process to several anomalies that happened since our last field review. First, the Program was assigned an investigator for over a year that had no appraisal or appraisal investigative experience. Second, when that investigator left the Program, it took almost a year to hire an investigator with appraisal experience. Third, the Program was required to investigate a large commercial complaint case based on a request from the Governor’s office. While that case was proven to not have been a violation of Uniform Standards of Professional Appraisal Practice (“USPAP”), the case was expensive to investigate and used most of the funds normally used for residential reviews and subsequent hearings. Finally, during this same time period, the Program received over 100 anonymous complaints. This doubled the number of complaints received per year.

The Commission and staff believe that they have made improvements to the Program to correct deficiencies, including the hiring of a new investigator who is knowledgeable in the USPAP, and are fully funded under a new biennium budget that restored their budget to process complaints. Further, they believe that the state will be able to complete the aged cases and process future complaints in compliance with Policy Statement 10E.

We, however, remain concerned that this may not be sufficient to address weaknesses given possible budgetary constraints. The Commission and staff have expressed concerns that there may be mandatory state-wide budget cuts to address declines in state revenue.

To address this concern, the Division and Commission needs to:

1. Develop and implement specific plans to reduce the backlog of outstanding complaints and to process all complaints on a timely basis, and to inform the ASC, in writing, of those plans no later than 60 days after receiving this letter; and
 2. Provide an electronic complaint log quarterly to denise@asc.gov.
- **Nevada’s statute regarding reinstatement of an inactive credential did not conform to AQB criteria.**

During this field review, we found that Nevada’s statute NRS645C.430 limits the total number of continuing education hours the Commission may require an applicant returning from inactive status to 60 hours, regardless of the number of years the applicant was inactive. In May 2006, the AQB adopted an Interpretation to its criteria stating that prior to reactivation, credential holders in an inactive status must complete all required continuing education hours (the equivalent of 14 hours per year) that would have been required if the credential holder had maintained an active status. The required hours must also include the most recent edition of a 7-hour National USPAP Update Course.

While on site, ASC staff discussed this deficiency with the Commission, Program staff, and legal counsel. We understand that they did not realize that this regulation was not AQB compliant and agreed to revise it. We also realize the time period for requesting amendments to the statute for the 2009 Legislative session may have passed. The next legislative session will be in the spring of 2011.

Program staff believed that the Commission did not receive any requests for reinstatement under this provision. Our review of meeting minutes and application files also failed to identify any person inappropriately credentialed on this basis. Furthermore, the Commission's regulations correctly require the appropriate number of continuing education hours and would be applied when reinstating an applicant's credential.

To address this concern, the Commission needs to:

1. Initiate the process for amending the statute as soon as possible to ensure that the state's requirements conform with the AQB Interpretation noted above; and
2. Provide us copies of the statutory amendments as they are proposed and adopted to address these concerns.

- **Regulatory amendments should be made for correction and further clarification.**

During this field review, we found that several regulations needed to be amended and clarified to conform to AQB criteria. Specifically, Nevada needs to amend the following:

1. NAC 645C.235 and NAC 645C.240 need to be corrected to reference the specific required 15-hour National USPAP course, instead of a course in USPAP;
2. NAC 645C.300 needs to be corrected to reference the specific required 7-hour National USPAP Update course, instead of a course in the USPAP; and
3. NAC 645C.231 needs to be corrected to require that USPAP courses must be taught by an AQB certified instructor who also holds a state certified credential.

While on site, ASC staff discussed the various amendments that need to be made to the statutes and regulations with the Commission, Program staff and legal counsel. They agreed to make the necessary amendments, when appropriate.

We recognize that although current Nevada regulations would technically allow a credential holder to rely on a USPAP course that is not the National USPAP course or that is not taught by an AQB certified instructor who also holds a state certified credential, Nevada, in practice, only accepts the National USPAP Courses in accordance with AQB criteria.

To address this concern, the Commission needs to:

1. Initiate the process for amending the regulations as soon as possible to ensure that the state's requirements conform with the AQB Interpretation noted above; and
2. Provide us copies of the regulatory amendments as they are proposed and adopted to address these concerns.

Unless otherwise noted above, please respond to our findings and recommendations within 60 days following the receipt of this letter. Until the expiration of that 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 further questions.

Sincerely,

Virginia M. Gibbs
Chairman

cc: Brenda Kindred-Kipling, Appraisal Officer
President, Nevada Commission of Appraisers of Real Estate