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Appraisal Subcommittee

Federal Financial Institutions Examination Council

January 5, 2007

Ms. Keren Prior, Chair
Colorado Board of Real Estate Appraisers
Department of Regulatory Agencies, Division of Real Estate
1560 Broadway, Suite 925
Denver, CO 80202

Dear Ms. Prior:

Thank you for the cooperation and assistance of the Colorado Board of Real Estate Appraisers (“Board”), the Department of Regulatory Agencies (“Department”), and the Division of Real Estate (“Division”) in the October 4-6, 2006 Appraisal Subcommittee (“ASC”) review of Colorado’s real estate appraiser regulatory program (“Program”).

Based on our review, we find that Colorado’s Program fails to comply with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (“Title XI”). The Program has serious weaknesses in the following areas: complaint investigation and resolution; temporary practice; processing applications for applicants with mass appraisal experience; distance education; continuing education auditing; and record keeping.

Because of the serious nature of these weaknesses, the ASC is placing Colorado on a one-year field review cycle for closer monitoring. If the weaknesses discussed in this letter are not resolved in a timely manner, the ASC may consider initiating a non-recognition proceeding against the State under § 1118 of Title XI, 12 U.S.C. 3347.

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

Colorado’s complaint investigation and resolution process does not comply with Title XI and ASC Policy Statement 10 because many complaints are not investigated and resolved in a timely manner. Title XI requires that States adequately supervise their certified and licensed appraisers. An effective complaint investigation and resolution process is a critical element of adequate supervision. ASC Policy Statement 10 provides that State appraiser regulatory agencies need to process complaints on a timely basis. Absent special circumstances, final State administrative decisions regarding complaints should occur within one year of the complaint filing date.

We cited this deficiency in our letter following our September 2003 field review. During the current field review, we found that conditions had not improved appreciably. We again found that many complaints were not investigated and resolved in a timely manner. The Board and Division have failed to place the necessary emphasis and provide the necessary resources to enable timely investigation and resolution of complaints. The chart below summarizes the statistics:

Field Review Cycle	Complaints Received	Complaints outstanding	Complaints outstanding more than 1 year
May 2000	286	66	17 (26%)
Sep 2003	495 (~150/year)	186	100 (54%)
Oct 2006	674 (~220/year)	244	83 (34%)

During the current field review, we noted that Division staff had developed spreadsheets to track complaints and compliance with stipulated agreements. However, we also found that the tracking spreadsheets often were not used and were not accessible to all employees who needed to use them. As a result, we found several different versions of the spreadsheet with differing data. Even though Division staff had been working to consolidate and update the spreadsheets, we still discovered numerous discrepancies.

While on site, ASC staff requested 29 complaint files for review. Division staff was unable to locate seven of these files. ASC staff reviewed the 22 files that were located and found that seven lacked supporting documentation. Of the remaining fifteen files, several contained large gaps of time during which expected actions, or the reasons why such actions were not taken, were not documented.

ASC Policy Statement 10 E requires each State agency to ensure that its entire system for processing and investigating complains and sanctioning appraisers is administered, among other things, in a well-documented manner. “Well-documented” means that relevant documentation pertaining to a matter exists, and it will enable ASC staff to understand the facts and determinations in the matter and the reasons for those determinations.

To resolve these concerns, the Board and Division 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;
 2. Maintain an effective complaint tracking system that ensures that all complaints and outstanding stipulated agreements are tracked accurately and provide a copy of that log to the ASC quarterly; and
 3. Maintain copies of all documentation supporting Board decisions regarding all appraiser-related complaints in accordance with ASC Policy Statement 10 E, State record retention requirements, and, at a minimum, until the next full ASC field review.
- **The Division and Board did not process temporary practice applications in accordance with Title XI and ASC Policy Statement 5.**

Colorado failed to comply with the temporary practice provisions of Title XI and ASC Policy Statement 5 in two ways. First, the State did not process completed temporary practice applications within five business days of receipt of completed applications. ASC staff reviewed 22 temporary practice applications and found that 20 were not processed within five business

days of receipt. We understand that, prior to August 2006, Division staff was operating under procedures designed to process temporary practice applications within ten days of receipt. Division staff informed us that, in August 2006, the time period was reduced to five days. We reviewed five permits issued since August and found they were processed within five business days of receipt

Second, based on Board regulation and the temporary practice permit itself, it appears that permits are valid until the assignment is completed. This is consistent with ASC Policy Statement 5. However, when temporary practice permits are recorded on Colorado's Web site, they are assigned an expiration date of 90 days from the date of issuance. Title XI and ASC Policy Statement 5 require temporary practice permits to be awarded on an assignment basis and for a period of at least six months.

To address this concern, the Board and Division need to:

1. Continue to ensure that all complete temporary practice applications are processed within five business days of receipt; and
 2. Correct the Web site to show that the temporary practice permits are valid for the term of the assignment in accordance with Board regulations, Title XI, and ASC Policy Statement 5.
- **Colorado's practices allow tax assessors to be granted appraiser credentials without documented conformance to Appraiser Qualifications Board ("AQB") experience criteria.**

Chapter 5 of the Board's regulations provides that each application for licensure or certification shall be accompanied by a log of real estate appraisal experience. It further states that the log shall be on the form or in the manner specified by the Board. In a memorandum dated April 1, 2004, and revised September 8, 2005, the Board advised Colorado County Tax Assessors that the major considerations for applicants for licensure or certification are participation in the full appraisal process and compliance with USPAP. It further stated that applicants must provide a narrative statement including a detailed description of their duties, activities, and responsibilities. Colorado's application for licensure or certification states that applicants whose appraisal experience does not include appraisal reports may submit a detailed statement that explains appraisal experience in lieu of a log. It is likely that this process, if implemented correctly, would ensure that applicants relying on mass appraisal experience provided adequate documentation of conformance to AQB criteria. We found, however, that this process was not implemented consistently or completely.

ASC staff randomly selected and reviewed 57 applications for licensure or certification. Nine of the selected applications were from tax assessors. None of the applications relying on mass appraisal experience conformed to AQB criteria. The applications failed to document the necessary hours of experience and/or reference USPAP-compliant work.

Five requirements, pertinent to this issue, existed in the March 27, 1991 AQB criteria and Interpretations:

- Two years of experience were needed;
- An hour of experience was defined as verifiable time spent performing tasks in accordance with acceptable appraisal experience;
- State agencies had to verify claimed experience via affidavit;
- Experience should be awarded to *ad valorem* tax appraisers only if they demonstrated that they used valuation techniques similar to those used by other appraisers and that they could effectively use the appraisal process; and
- Mass appraisals had to conform to Standards Rule 6 of USPAP.

USPAP 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. The 1991 AQB criteria required that mass appraisal experience had to conform to USPAP Standard Rule 6. Because the AQB did not establish a time period regarding when this provision became effective, mass appraisal experience, regardless of when earned, had to comply with USPAP Standards Rule 6. In other words, beginning on March 27, 1991, certified appraiser credentials issued by a State must be supported by experience that met AQB criteria. For mass appraisal experience, the appraiser's experience had to comply with USPAP Standards Rule 6.

In June 1997, the AQB changed the Interpretation regarding mass appraisal. The new Interpretation stated that mass appraisal experience earned after January 1, 1991, had to conform to USPAP Standard 6. This Interpretation became effective in June 1997. Therefore, it applied to certified credentials issued in June 1997, or later.

In November 2006, ASC Executive Director Ben Henson met with the AQB during its public meeting and work sessions in La Jolla, California. Mr. Henson presented the mass appraisal experience issue to the AQB and discussed the ASC's reading and understanding of the AQB criteria. The AQB concurred with the ASC's understanding of the criteria. In summary, the AQB stated that the criteria always have required that mass appraisal experience must comply with USPAP Standard Rule 6, and that the State had a responsibility to make that determination.

Colorado had a duty under the AQB's certification criteria and Title XI to ensure that mass appraisal experience conformed to USPAP Standard Rule 6. While the certification criteria specifically allowed State agencies to accept experience claimed via affidavit, the criteria must be read as a whole, not piecemeal. The provision regarding the acceptance of experience affidavits must be read together in a reasonable manner with the provisions that mass appraisal experience had to conform to USPAP Standard 6. Therefore, States could not rely solely on accepting affidavits in these circumstances. States had to make a reasonable effort to determine whether applicants performed their mass appraisal work in compliance with USPAP Standard 6. The Board, since the inception of the Program, failed to review mass appraisal experience claims to determine whether that experience conformed to USPAP Standard Rule 6.

Colorado's acceptance of experience affidavits also created 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 10 B 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." The ASC greatly strengthened that language, effective January 1, 2005, by adding new paragraph F, which prohibited States from accepting experience-related affidavits from applicants for certification.

Based on our field review findings, Colorado failed to comply with our 1993 Policy Statement regarding the need to validate experience claimed by applicants, and the 2005 Policy Statement amendment that prohibited States from accepting experience-related affidavits.

To resolve this concern, the Board and Division need to:

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 10 F;
2. Within 60 days from the date of this letter, identify, since the inception of the Program, all appraisers who were issued appraiser credentials supported by mass appraisal experience;
3. Within 90 days from the date of this letter, 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. Within 100 days from the date of this letter, send a letter to all appraisers determined to be deficient in step three requesting documentation of appraiser experience obtained since being issued an appraiser credential;
5. Within 120 days from the date of this letter, determine whether any of the appraisers identified in step three failed to document AQB-qualifying experience for the credential held.
 - 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, the Board 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 would be listed on the National Registry as “non-AQB compliant.” Alternatively, the Board 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
6. Within 180 days from the Board’s receipt of this letter, send the ASC a spreadsheet listing each appraiser identified in step one, and include each appraiser’s status relative to this action plan.
- **Colorado’s audits of continuing education affidavits indicated an unacceptably high failure rate.**

Colorado has a three-year credentialing cycle. To expedite the renewal process, appraisers were permitted to submit a signed affidavit certifying that they had met continuing education requirements, instead of submitting supporting documentation regarding courses taken. All renewals are due on December 31st.

Each February, Division staff randomly selects and audits 30% of the renewing population. Staff reviews the course completion information submitted for compliance with AQB continuing education criteria, including the requirement to take the 7-hour National USPAP Update Course every two years.

The chart below summarizes audit statistics for the past four years:

Year Audit Conducted	Number of Certified Appraisers Renewed	Number of Certified Appraisers Audited	Number Non-compliant
2003	425	120 (28%)	4 (3%)
2004	882	168 (19%)	10 (6%)
2005	707	268 (38%)	13 (5%)
2006	428	148 (35%)	18 (12%)

The percentage of audited appraisers who failed to support their continuing education affidavits increased substantially in 2006, to 12%. ASC Policy Statement 10 F provides that, if a State determines that more than ten percent of the audited appraisers failed to meet the AQB criteria, the State must take remedial action to address the apparent weakness in its affidavit process. Possible actions could include: auditing the affidavit submissions of every appraiser in the renewing population; abandoning the affidavit process; and/or prominently publishing the names of appraisers failing the audit to improve deterrence. The ASC will determine on a case-by-case basis whether remedial actions were effective and acceptable.

To address this concern, the Board and Division need to:

1. Within 60 days of receiving this letter, conduct a continuing education audit for every appraiser who renewed an appraiser credential effective December 31, 2005. If the

State wishes to take a different remedial action, the State must notify the ASC of that proposed action and support why that action would be effective in remedying this weakness;

2. Within 90 days of receiving this letter, for appraisers who are unable to support their affidavits with documented continuing education that conforms to AQB criteria, determine whether:
 - a. the failure resulted from a good faith misunderstanding on the part of the appraiser; or
 - b. the failure resulted from the appraiser's knowing falsification of the State application;
 3. Within 120 days of receiving this letter:
 - a. For appraisers identified pursuant to step 2.a., require the appraiser to take the necessary continuing education within 30 days and take any other disciplinary action the Board deems appropriate; and
 - b. For appraisers identified pursuant to step 2.b., take appropriate disciplinary action for an appraiser who knowingly falsified a government document. Such an action calls into question the appraiser's ethics. Ethical behavior is at the very core of appraisal practice. Accordingly, we expect that disciplinary actions in these cases would be correspondingly severe; and
 4. Within 150 days of receiving this letter, provide ASC staff a spreadsheet identifying each appraiser who renewed effective December 31, 2005, and detail the findings and status resulting from the above corrective action steps.
- **Colorado failed to retain adequate documentation to support the decision-making process for education course approvals or disapprovals.**

Division staff reviews all qualifying and continuing education course offerings for compliance with AQB criteria. The Division did not maintain adequate documentation to support the decision-making process.

Prior to arrival on-site, ASC staff reviewed the Board's approved course list for qualifying education and continuing education, selected 22 approved education courses for review, and forwarded to the Division staff the list of selected courses. Division staff was unable to locate and/or provide documentation files for seven of the selected courses. ASC staff reviewed the 15 education course files that were located and found that eight of those files did not contain sufficient documentation to support compliance with AQB criteria.

ASC staff is familiar with several of the courses and providers listed in the undocumented files, and believes that the courses likely are compliant with AQB criteria. The Board and Division, however, need to maintain documentation supporting Board decisions to approve or disapprove educational courses until, at a minimum, the next ASC field review of the Program.

- **Colorado failed to retain adequate documentation to substantiate that appraiser credentials were issued in compliance with AQB criteria.**

The review of appraiser application files by ASC staff revealed that qualifying education and examination results were well documented, but many files failed to have supporting documentation for qualifying experience.

Colorado requires all applicants, except tax assessors, to submit a complete experience log. The Division, however, destroys experience logs 90 days after taking action on an application. It is our understanding that this process was employed to save file space and was not based on a State records retention statute or regulation.

ASC staff reviewed the application files for a number of applications approved within the 90-day period preceding our field review. With the exception of tax assessor applications, each application file contained an appropriately documented experience log. Therefore, we are relatively confident that the Division is obtaining and reviewing appraiser applicant experience before issuing appraiser credentials.

The destruction of experience logs, however, creates two concerns. First, the records are destroyed without the ASC having an opportunity to review them. This hampers our ability to determine whether the State complied with Title XI when it issued the credentials. Second, the Division does not maintain sufficient documentation to defend against potential unlawful discrimination, preferential treatment, or other accusations.

To address this concern, the Board and Division need to maintain experience logs and other documentation supporting experience claims until, at a minimum, the ASC has conducted its next scheduled on-site field review.

- **Colorado approved a distance education course that failed to conform to AQB criteria.**

Board regulations provide that the Board will not accept distance education courses begun on or after January 1, 2004, unless the course has been approved through the AQB's Course Approval Program. ASC staff, however, identified one Board-approved distance education course that was not approved through the Course Approval Program and appeared inconsistent with AQB distance education criteria. Specifically, the distance education course failed to have its delivery methodology approved by one of the approval sources specified in AQB criteria. The identified course was approved by the Board on December 8, 2004. ASC staff provided the name and provider of this course to the Board and Division during the field review.

To resolve this concern, the Board and Division need to:

1. Within 30 days from the date of this letter, identify all persons issued renewed credentials supported by the identified distance education course;

2. Within 45 days from the date of this letter, determine whether each of the appraisers identified in step one had sufficient education to support renewal of his or her credential without including the identified course;
3. Within 60 days from the date of this letter, advise in writing the appraisers who did not have sufficient education to support renewal of their credentials that they must take the necessary hours of continuing education within 30 days to satisfy AQB criteria and report the course completion to the Board; and
4. Within seven days after the close of the 60-day period to obtain the necessary education, determine which appraisers have not earned the necessary hours of education and:
 - a. For certified appraisers, either promptly downgrade them to the licensed category and report that action to the ASC (in which case their National Registry entry will be changed to “non-AQB compliant”) or recall their certifications and reissue them conspicuously over stamped with the phrase, “Not Eligible to Perform Federally Related Transactions.” Appraisers choosing over stamped credentials will be removed from the National Registry; and
 - b. For licensed appraisers, report the appraisers to the ASC (in which case their National Registry entry will be changed to “non-AQB compliant”).

Please respond to our findings and recommendations within 60 days from the date of this letter, and as otherwise specified in the corrective action steps. 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

cc: Jeffrey Foster, Acting Program Administrator
Erin Toll, Director, Division of Real Estate
Tambor Williams, Executive Director, Department of Regulatory Agencies