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Appraisal Subcommittee

Federal Financial Institutions Examination Council

April 23, 2007

Ms. Erin Toll, Director
Department of Regulatory Agencies, Division of Real Estate
1560 Broadway, Suite 925
Denver, CO 80202

Dear Ms. Toll:

Thank you for your March 2, 2007 response to the Appraisal Subcommittee's ("ASC") January 5, 2007 field review letter regarding Colorado's appraiser regulatory program ("Program"). In your letter, you responded to each of the seven areas of concern outlined in our letter. While we are pleased that Colorado has made some progress to address our concerns, as discussed below, further curative efforts are necessary.

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

The ASC, in its January 5th field review letter, stated that Colorado's complaint investigation and resolution process did not comply with Title XI and ASC Policy Statement 10 because many complaints were not investigated and resolved in a timely manner. We further noted that Colorado needed to improve documentation and tracking of complaint cases. To resolve these concerns, the Board and Division needed 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.

In your letter, you described your plans to reduce the backlog of outstanding complaints, process complaints in a timely manner, maintain an effective electronic complaint tracking system, and maintain documentation supporting Board decisions. The Division of Real Estate ("DRE") has entered into contracts with several private individuals to assist in the investigation process; has sought and largely received additional funding to improve the appraiser-related complaint investigation and resolution process; and has received increased legal support from the Office of the Attorney General. In addition, to speed up the case resolution process, certain items, such as counteroffers and administrative matters previously heard by the Board of Real Estate Appraisers ("BOREA") now will be handled via delegated authority by DRE staff.

Additionally, the complaint tracking system is being totally revamped. Finally, after a review by an independent business consultant, DRE has been reorganized to increase the amount of time investigators have to focus on cases.

We appreciate your efforts and hope that they will be successful in improving Colorado's complaint investigation program and bringing it into compliance with Title XI and ASC Policy Statement 10. We expect to see a substantial reduction in the number of outstanding and aged complaints when we return for our follow-up review on August 9, 2007, and we hope that your complaint investigation and resolution program will be in full compliance with Title XI and our Policy Statement when we perform the next full field review of your Program during 2008. Should we not see substantial improvement when we perform that field review, ASC staff will recommend that the ASC consider initiating a non-recognition proceeding against Colorado under § 1118(b) of Title XI, 12 U.S.C. 3347(b).

- **The Division and Board did not process temporary practice applications in accordance with Title XI and ASC Policy Statement 5.**

In our January 5th field review letter, the ASC stated that Colorado failed to comply in two ways with the temporary practice provisions of Title XI and ASC Policy Statement 5. First, the State did not always process completed temporary practice applications within five business days of receipt of completed applications. Second, when temporary practice permits were recorded on Colorado's Web site, they were 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, with one easy extension.

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

1. Continue to ensure that all complete temporary practice applications were processed within five business days of receipt; and
2. Correct the Web site to show that the temporary practice permits were valid for the term of the assignment in accordance with Board regulations, Title XI, and ASC Policy Statement 5.

In your letter, you stated that you have successfully addressed both of these items. First, DRE changed its temporary practice processing procedures to ensure that complete temporary practice requests are processed fully within five business days of receipt. Second, DRE changed its Web site to reflect that temporary practice permits are valid for six months and may be renewed for another six months upon request. We appreciate your efforts to bring your temporary practice permit program into compliance with 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.**

The ASC, in its January 5th field review letter stated that Colorado granted credentials to applicants relying on mass appraisal experience without documented conformance to AQB criteria. We noted that 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. We further noted that Colorado failed to comply with our 1993 Policy Statement regarding the need to validate experience claimed by applicants (paragraph 10 B), and the 2005 Policy Statement amendment that prohibited States from accepting experience-related affidavits (paragraphs 10 B and 10 F). Under AQB certification criteria and these Policy Statements, States had to make a reasonable effort to determine whether applicants performed their mass appraisal work in compliance with USPAP Standard 6. BOREA, since the inception of the Program, failed to review mass appraisal experience claims to determine whether that experience conformed to USPAP Standard Rule 6.

To resolve this concern, the ASC set forth a series of steps that the Board and Division needed to implement.

In your letter, you stated that DRE had stopped awarding certified credentials to applicants relying on mass appraisal experience, unless the applicant provides an experience log that conforms fully to the AQB's experience requirements for certification. However, you stated that DRE is unable to comply with the other remedial steps because the historical data needed to identify appraisers who were issued appraiser credentials supported by mass appraisal experience are unavailable. You contacted Colorado tax assessor's offices to obtain this data, but were informed that such data had not been maintained. You noted that the maintenance of such records back to 1991 is required by State statutes, regulations, or policies.

Because of your inability to obtain these historical records, you proposed an alternative method of attaining compliance. DRE would take the following steps:

1. Send letters to every tax assessor office in Colorado, asking assessors to identify assessor employees who received appraiser credentials based on mass appraisal experience after January 1, 2005, the effective date of ASC Policy Statement 10 F. The response date would be April 30, 2007;
2. Ask BOREA to adopt rules requiring person identified in step one to submit acceptable experience logs prior to renewal of their credentials. To the extent legally permissible, BOREA would not renew the credentials of individuals who failed to submit logs;
3. Post information on its Web site and newsletter information all appraisers who were credentialed using mass appraisal experience that they must comply with AQB criteria and ASC Policy Statement 10; and
4. Request all appraisers to self-identify their credentialing upon renewal, with DRE taking appropriate steps to ensure their proper credentialing.

We cannot accept your proposal for the following reasons. First, Colorado has a three-year credentialing cycle. The ASC cannot permit a State to issue certified credentials that authorize appraisers holding those credentials to perform appraisals in federally related transactions if those appraisers do not meet the AQB's minimum experience requirements and, therefore, Title XI's requirements. To allow such appraisers to continue performing appraisals in federally related transactions for such an extended period would misrepresent their authority to federally insured financial institutions and other users of appraisal services. As a result, your proposed step four is unacceptable.

Second, January 1, 2005 is an inappropriate starting date for identifying all appraisers who were issued appraiser credentials supported by mass appraisal experience. While ASC Policy Statement 10 F became effective on that date, ASC Policy Statement 10 B became effective in August 1993. Paragraph B, like paragraph F, required States to have a reliable means of validating experience credit claimed for certification. Moreover, the AQB's certification criteria, since 1991, required States to make a reasonable effort to determine whether applicants performed their mass appraisal work in compliance with USPAP Standard 6. BOREA, since the inception of the Program, failed to review mass appraisal experience claims to determine whether that experience conformed to USPAP Standard Rule 6. Therefore, proposed step one is unacceptable.

Third, while requiring identified appraisers to submit "acceptable" experience logs is appropriate, as you would require in proposed step two, the submission of experience logs is only the first step in evaluating an applicant's experience claims. For such logs to be acceptable, Colorado, in some reliable manner, also must validate that the experience listed on the log actually exists. Therefore, each entry on an experience log needs to contain sufficient information to enable DRE/BOREA to validate the existence of the appraisal work. It is unclear from your letter whether those logs would contain the necessary amount of specificity to fulfill this purpose and whether DRE/BOREA plans to take implement such validation procedures.

Fourth, DRE/BOREA must determine whether *each* applicant for certification is capable of performing USPAP-compliant work. For *ad valorem* tax appraisal work to qualify as experience credit under the AQB certification criteria, that work must conform to USPAP Standard 6. The only acceptable method of making this determination is by reviewing appraisal work product. It is important to note that DRE/BOREA must select the work products to be reviewed.

DRE/BOREA must exercise due diligence in determining whether submitted experience is USPAP-compliant. States are free to tailor their methods of making this determination to fit their unique needs. The ASC, during its next field review of the Program, will evaluate whether your method of determining USPAP compliance has been effective in measuring each applicant's competency to perform USPAP-compliant work.

Finally, we understand that Colorado's record retention standards require DRE and BOREA to retain application files for the current year and the previous three years. Therefore, you should be able to locate those files easily and review them to identify licensed or certified appraisers who relied in whole or in part on *ad valorem* tax appraisal work during that period to meet their experience requirements under AQB criteria.

With respect to the balance of appraisers who were licensed or certified prior to that time, you still need to identify every *currently* licensed or certified appraiser who qualified for his or her credential based in whole or in part on *ad valorem* tax appraisal work. At this time, we are not requiring you to identify these appraisers in any specific manner. Any identification method will suffice provided it accurately identifies each *ad valorem* tax appraiser. If you believe that contacting tax assessor's offices, rather than directly contacting your credentialed appraisers, will result in accurately identifying these appraisers, you may do so. If that method, however, fails to reach that result, we may require you to directly contact those appraisers.

Once you have identified the universe of all affected active appraisers, you then need to follow the balance of our curative steps listed in our field review letter. The timeframes for compliance, however, need to be modified. For the sake of clarity, we have restated these steps:

1. By May 15, 2007 (15 days after you have received responses from tax assessor's offices), identify, since the inception of the Program, all currently active appraisers who were issued appraiser credentials supported by mass appraisal experience;
2. By June 1, 2007, determine whether the file for each appraiser identified in step two contains documentation to support conformance to AQB criteria and ASC Policy Statement 10;
3. By June 8, 2007, send a letter to all active appraisers determined to be deficient in step two requesting documentation of appraiser experience obtained since being issued an appraiser credential;
4. By June 29, 2007, determine whether any of the appraisers 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
5. By July 20, 2007, send the ASC a spreadsheet listing each appraiser identified in step one, and include each appraiser's status relative to this action plan.

It is important to note that our focus is on whether this universe of appraisers conforms to AQB certification criteria **today** and, therefore, meets Title XI's requirements to continue to hold an active certified appraiser credential. For this purpose, qualifying experience could have been earned at any time, including within the most recent years.

On the ASC's web site, we maintain a copy of the appraiser data contained in the National Registry of State Certified and Licensed Appraisers. For each active record, we indicate whether that appraiser credential is AQB compliant. Possible answers to this query are "Yes, No,

Unknown.” Many users of appraisal services, including HUD/FHA and many financial institutions, will accept appraisal work only from appraisers whose National Registry record indicates that the credential is AQB compliant. If DRE/BOREA is unable to make the determinations specified in our January 5th field review letter, as revised in this letter, we may be forced to change the AQB Complaint field for affected Colorado appraisers to “Unknown.”

- **Colorado’s audits of continuing education affidavits indicated an unacceptably high failure rate.**

Our January 5th field review letter stated that Colorado’s 2006 audit of continuing education affidavits revealed that 12% of audited appraisers were unable to support the claimed continuing education. ASC Policy Statement 10 F provides that, if a State determines that more than 10% of audited appraisers fail to meet the AQB criteria, the State must take remedial action to address the apparent weakness in its affidavit process. In our field review letter, the ASC directed DRE and BOREA to take several steps to address this concern, or provide an alternative course of action that was acceptable to the ASC.

In your response, you proposed two alternatives to the ASC-specified actions and stated your desire to work with the ASC to come up with a mutually agreeable solution by June 30, 2007. The first alternative would involve abandoning the affidavit process and implementing 100% continuing education compliance. The second alternative would involve continuing with the affidavit process but implementing several enhancements.

In general, we believe that either of these alternatives, if implemented correctly, could address our concerns in this area going forward. The first alternative would require each renewing appraiser to prove continuing education compliance using an automated continuing education tracking system. We have seen several States successfully implement such systems in the last few years. Regarding the second alternative, we would need more specific information to make a final determination regarding its acceptability.

Neither of those alternatives, however, addresses our concerns regarding the population of appraisers whose credentials were renewed for a three-year period effective December 31, 2005. Twelve percent of audited renewing appraisers were unable to document compliance with AQB criteria and Title XI. If 12% is representative of the total population of appraisers renewing at that time (428), Colorado could have 50 or more appraisers holding credentials that fail to conform to Federal law. Those appraisers are not legally entitled to perform appraisals in connection with federally related transactions. Allowing those appraisers to continue performing appraisals in federally related transactions would misrepresent their authority to federally insured financial institutions and other users of appraisal services.

While we are willing to work with DRE/BOREA regarding an acceptable method of reviewing renewal applications on a going forward basis, DRE/BOREA still must address our concerns regarding those active appraisers whose credentials fail to comply with Federal law. DRE and BOREA need to take the steps set out in our January 5th field review letter. Because time is of the essence, we have modified those steps as follows:

1. Within 21 days from receipt of this letter, conduct a continuing education audit for every appraiser who renewed an appraiser credential effective December 31, 2005;

2. Within 35 days from receipt of 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 90 days from receipt of 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 120 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.**

As noted in our January 5th field review letter, DRE did not maintain adequate documentation to support the decision-making process regarding the approval or disapproval of appraiser-related education courses. DRE staff was unable to locate and/or provide documentation files for several of those courses.

In your letter, you stated that DRE is working with the appraisal industry to find ways to streamline and improve the course approval process. You have requested input from several course providers. DRE already has modified its Web site to state that course providers offering courses approved through the AQB Course Approval Program ("CAP") no longer need to apply for approval. We appreciate Colorado's commitment to maintain documentation supporting course approvals until the next ASC field review of your Program.

You stated that BOREA authorized the formation of a task force to make recommendations regarding four proposals under consideration to improve the course approval process. The fourth proposal, which would allow approved course providers to offer continuing education courses without prior approval from DRE or BOREA, is inappropriate. A State cannot delegate to outside parties (other than the AQB) its substantive duty to review and approve each course for consistency with the AQB criteria. Moreover, the failure to review and approve courses in

advance likely would result in persons taking coursework that does not meet AQB criteria and cannot be used to obtain or renew their credentials.

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

In your letter, you stated that DRE no longer would destroy experience logs 90 days after DRE/BOREA acts on related appraiser applications. Experience logs and other documentation supporting experience claims will be retained until we conduct our next scheduled on site field review of your Program. We appreciate your prompt response to our concern.

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

In our January 5th field review letter, the ASC noted that BOREA approved a distance education course that 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. To resolve this concern, DRE and BOREA needed to take several specific actions to ensure that licensed or certified appraisers had not renewed their credentials based on this course.

In your letter, you detailed your actions to identify the 16 licensed or certified appraisers who relied on this course to renew their credentials. You informed these appraisers, by letter, to provide you, by March 16, 2007, proof of having met the continuing education requirements without counting this course or to provide evidence of having completed an acceptable two-hour course.

You informed us in an April 1, 2007 email that all 16 appraisers responded to your letter request, advising that they met the continuing education requirements. Thirteen appraisers took a substitute continuing education course, and three appraisers showed that they earned sufficient continuing education hours without counting the non-compliant course.

Finally, you reported to us that an additional two appraisers had taken the noncompliant education, but have not yet renewed their credentials. You have informed these appraisers, by letter, that they cannot use the course for continuing education credit at renewal time.

We appreciate your prompt actions to resolve this concern.

Our field review letter, your response, and any other previous correspondence between us regarding the field review are now publicly available on our Web site. Please contact us if you have further questions.

Sincerely,

Ben Henson
Executive Director

cc: Keren Prior, Colorado Board of Real Estate Appraisers
D. Rico Munn, Executive Director, Department of Regulatory Agencies