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Appraisal Subcommittee

Federal Financial Institutions Examination Council

August 18, 2005

Mr. Gregory Syphax, Chairperson
District of Columbia Real Estate Appraisers Board
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 7W50
Washington, DC 20002

Dear Mr. Syphax:

Thank you for your cooperation and your staff's assistance in our follow-up review of the District of Columbia's ("District") real estate appraiser regulatory program ("Program") in Washington, DC, on May 15, 2005. Our follow-up review focused on concerns identified in the Appraisal Subcommittee's ("ASC") June 2004 field review.

EXECUTIVE SUMMARY

During the ASC's 2004 field review, we identified several serious weaknesses in the District's Program regarding its compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended ("Title XI"). We had previously addressed two of these weaknesses in our May 1, 2003 field review letter. The District, however, failed to implement corrective actions. In October 2004, we sent a letter to Mayor Anthony A. Williams expressing our concerns about the Program and requesting a meeting of senior District officials to discuss those concerns. On November 19, 2004, ASC staff met with District officials, discussed the Program's weaknesses, and agreed to corrective actions. On January 5, 2005, the ASC sent a letter to the District of Columbia Real Estate Appraisers Board ("Board") and the Department of Consumer and Regulatory Affairs ("Department") detailing our concerns and setting forth the agreements on corrective actions reached at the November 2004 meeting.

During our May 2005 follow-up review, we determined that the Board and Department made very limited progress in addressing the Program's weaknesses. In fact, conditions worsened in two key areas:

- The District does not investigate and resolve complaints against appraisers in a timely manner. In fact, most complaint cases remain unresolved; and
- The District's temporary practice fee is excessive and does not comply with Title XI and ASC Policy Statement 5. Further, since the June 2004 field review when the ASC identified the District's fee as excessive, the District increased the fee.

ASC staff will return for a full field review of the Program in January-February 2006. At that time, if the District has not made substantial and sustained progress toward resolving the concerns identified herein and in our previous correspondence, the ASC will initiate a non-recognition proceeding against the District under § 1118 of Title XI, 12 U.S.C. 3347, and 12 C.F.R. part 1102, subpart B (2005). If, pursuant to a non-recognition proceeding, the ASC determines that the District's Program failed to comply with Title XI, the District's commercial

and residential lending activities would be severely affected. In this regard, federally insured financial institutions would not be able to use appraisers certified or licensed by the District. Further, the Department of Housing and Urban Development's FHA Program would not be able to insure loans supported by appraisals performed by District appraisers; and Fannie Mae and Freddie Mac would not be able to purchase loans supported by appraisals performed by District appraisers.

Please respond to our findings and recommendations within 45 days following receipt of this letter. Until the expiration of that period or the receipt of your response, we consider this follow-up review to be an open matter. After receiving your response or the expiration of the 45-day response period, whichever is earlier, this letter, your response and any other correspondence between you and the ASC regarding this review become releasable to the public under the Freedom of Information Act and will be made available on our Web site.

DETAILED DISCUSSION of CONCERNS and NECESSARY ACTIONS

1. The Board has been unable to attain a quorum on a regular basis, which has seriously undermined substantive portions of the District's Program.

Previous Findings: For various reasons, the Board failed to meet and attain a quorum for several extended periods during the past eight years. The Board's failure to achieve a quorum adversely affected substantive Title XI-related responsibilities, such as complaint investigation and resolution, approval of education courses, and adoption of regulatory changes to implement Appraiser Qualifications Board criteria.

In the November 2004 meeting, Board and Department representatives described the following three steps that had been taken and/or were planned for implementation to address this concern:

- a. A new Board member was sworn in, bringing the total number of Board members to three, which is sufficient for a quorum;
- b. In October 2004, the Department forwarded two names to the DC Council for confirmation to fill the remaining Board vacancies. Their confirmation was expected by December 31, 2004, allowing a full Board to be seated in January 2005; and
- c. To facilitate obtaining quorums in the future, the Department intended to seek an amendment to the District's appraiser regulatory statute ("Statute") to change one of the Board positions from being filled by an appraiser to one filled by a licensed realtor or broker. Draft language was to be submitted to the DC Council by March 31, 2005.

Current Status: The Board resumed its operations on November 10, 2004, the first meeting in six months. The two final Board appointees were confirmed on January 3, 2005, and the full Board met for the first time in February 2005, one month later than anticipated.

The Department failed to submit by March 31, 2005, the draft statutory amendment for restructuring the Board to the DC Council for action. The Department submitted the draft to the Office of the Attorney General ("AG Office") on February 10, 2005. The AG Office returned the

draft to the Department on April 27th. The Department hopes to submit the draft to the DC Council before its summer recess.

Necessary Action: We are concerned that the draft statutory amendment is not progressing at the rate anticipated by the Board and Department. The Board and Department need to make every effort to expedite movement of the draft amendment through the legislative/regulatory process. Please keep ASC staff updated on the status of this amendment.

2. **The District does not investigate and resolve complaints against appraisers in a timely manner:**
 - a. **Most, if not all, complaints submitted within the past five years were unresolved, and complaint file documentation was incomplete; and**
 - b. **Investigative reports lacked substance.**

Previous Finding: The District received 34 complaints between November 1999, and December 2002. Three additional complaints were received between January 2003, and June 2004. Most complaints were filed by lending institutions or Fannie Mae, and were well documented. The Board did not fully investigate and/or resolve most of these complaints.

Investigators did not independently investigate complaints. Instead, they prepared investigative reports that essentially restated the complaint and the findings of the review appraiser, if a review appraiser was involved. It appeared that investigators did not employ appropriate investigative techniques when performing their duties. No apparent effort was made to independently support or refute the assertions of the respondent or the reviewer. It did not appear that investigators consulted real estate listing services or public records and did not interview appropriate individuals to obtain independent information pertaining to the complaint allegations.

During our November 19, 2004 meeting, the Board and Department agreed to address this deficiency by taking the following actions as soon as possible:

- a. The Department would review all complaints (including those that might have been dismissed under the Board resolution discussed above), determine their status, and report that status to the ASC;
- b. The Department, with any needed assistance by Director Collins, would hire outside investigators to address the complaint backlog and to process new complaints, and would provide the funds necessary for hiring those investigators; and
- c. The Department, with the assistance of Director Collins, would contact the Office of the Attorney General to expedite the Office's processing of already referred complaints and to ensure that procedures are in place for prompt processing of future referrals.

Current Status:

As illustrated below, most of the District's complaint cases remain unresolved. Based on the Department's complaint log, we developed the following summary statistics.

Field Review or Follow-up Review	Complaints Received	Complaints Outstanding	Complaints outstanding more than 1 year
June 2004	39	32 (83%)	30 (94%)
May 2005	41	34 (83%)	32 (94%)

Since our June 2004 field review, the District has received two additional complaints and has failed to complete the investigation and resolution of any outstanding complaint. As a result, the number of outstanding complaints and complaints outstanding more than one year increased.

The Board and Department, however, made some effort to address the concerns identified in our field review letter. Specifically, the Board and/or the Department:

- a. Reviewed all complaints and forwarded a log to ASC staff reporting the current status of all complaints received by the District to date; and
- b. Mailed letters on January 31, 2005, to all certified general appraisers in the District soliciting their interest in serving as a contract investigator. This solicitation resulted in 14 responses, with four appraisers being chosen as contract investigators. In a June 28, 2005 telephone conversation, ASC staff learned that the four appraisers were approved as DC contractors, and funds were allocated. Three of the four appraisers accepted the fee agreement and were scheduled to meet with Board staff before the end of June. At that meeting, Board staff will assign cases, and provide other information to the investigators.

At the time of the follow-up review, the Board and Department had not made any progress regarding the AG Office case processing delays. AG Office representatives explained to ASC staff that the AG Office cannot process complaints without a complete description of the possible violations of law. The representatives stated that the Board and Department failed to provide the necessary support and documentation.

During our follow-up field review, we found the AG Office's position largely justified. The Board and Department staff had not investigated complaints. They simply forward "raw" complaints to the AG Office for its action. According to the AG Office, the cases need to include investigative findings, violation documentation, and recommended actions. These requirements are consistent with the best practices that we have observed in other States.

An AG Office representative informed ASC staff that the Office had determined to proceed with 13 cases, even though no further file documentation had been provided by the Board or Department. These 13 complaints were referred to the Board by Fannie Mae. To prosecute these cases, the AG Office will have to rely on the testimony and expertise of the review appraisers engaged by the complainant, Fannie Mae. The AG Office drafted the necessary charges and specifications documents needed for these cases to proceed. The Board

reviewed the charging documents at its June 22nd meeting and forwarded the cases on June 24th to the Office of Administrative Hearings for further action.

One of the new complaints deserves special mention as it re-enforces our concern that the complaint investigation and resolution process is deficient. This complaint arose from an appraiser found guilty of real estate fraud involving approximately 36 distressed properties. Although the appraiser had been sentenced to prison for fraud, the District had not taken any disciplinary action.

Necessary Actions: To address these concerns, the Board and Department need to:

- a. Develop and implement formal procedures for complaint investigation and resolution;
- b. Devote the necessary resources to complaint investigation and resolution to eliminate the backlog of cases outstanding for more than one year. We will anticipate seeing substantial progress on this issue when we return for our 2006 field review;
- c. Work closely with the Office of Attorney General and the contract investigators to ensure that adequate documentation and support is provided to the Attorney General to facilitate necessary actions; and
- d. Continue to provide us with complaint logs on a monthly basis.

3. The District's temporary practice fee is not consistent with ASC Policy Statement 5.

Previous Finding: Under Title XI and ASC Policy Statement 5, temporary practice fees above \$150 are excessive and burdensome. At the time of our 2004 field review, the District had increased its temporary practice fee from \$150 to \$165.

Current Status: Since our 2004 field review, the District increased its temporary practice fee again from \$165 to \$215. In a March 3, 2005 letter to the ASC, the Board stated that the fee increase was to address a city-wide budget shortfall. The Board provided a copy of the DC Council's November 7, 2002 resolution declaring "an emergency with respect to the need to approve legislative measures to support action to close a \$323 million budgetary shortfall in the District's Fiscal Year 2003 proposed budget" and the April 30, 2004 Notice of Final Rule Making regarding the fee increases. Neither the Board nor its staff advised us of the plans to increase the temporary practice fee to \$215 while we were on-site in June 2004.

The District contends that its temporary practice fee is \$150. The District, however, charges an additional \$65 "application fee" for a temporary practice permit, resulting in a total temporary practice fee of \$215. That total fee exceeds the \$150 maximum temporary practice fee allowed by ASC Policy Statement 5 and is, by definition, an "excessive fee" prohibited by Title XI.

Necessary Action: The Board and Department must take the necessary actions to reduce the total fee charged for temporary practice to not more than \$150.

4. The Statute and/or regulations do not conform to the AQB certification criteria changes.

Previous Finding: The District's statutes and/or regulations failed to conform to the AQB's appraiser certification criteria in two ways. First, the District had not formally adopted the AQB's January 1, 2003 changes to its certification criteria. While the District was enforcing these changes by informal practice, the District needed to amend its statute and/or regulations to incorporate these AQB changes. We noted that this deficiency was included in our field review letter concerning our December 2002 field review.

Second, as noted in our December 2002 field review, the District's statute and regulations provided for automatic approval of courses offered by sponsors of the Appraisal Foundation. Automatic approval is inappropriate because being a sponsor of the Appraisal Foundation does not, in and of itself, ensure that an education provider's offering meets the AQB criteria's educational requirements. While the District apparently analyzed each Appraisal Foundation sponsor's course to determine whether the course complies with AQB criteria, the District needed to repeal these provisions to eliminate this apparent conflict between law and practice.

Current Status: Board Chairman Syphax provided to ASC staff the January 27, 2005 draft proposed regulations identified as "Attorney Work Product." Upon our review, we discovered that the draft did not include the January 1, 2003 AQB criteria changes. The draft only included amendments to conform the District's regulations to the AQB's 2008 criteria changes. While we appreciate that the District is taking action regarding the 2008 AQB criteria changes, the District still has not addressed the requirement to conform its regulations to the current AQB criteria.

We understand that the Department submitted the draft regulations to the AG Office on February 10, 2005. The AG Office returned a "marked-up" copy on March 18th. We also understand that the AG Office advised the Department and Board that the District cannot enact the proposed rules unless and until the draft legislation discussed previously becomes law. The Department will resubmit the proposed regulations at that time.

Necessary Actions: The Board and Department need to ensure that the necessary changes to its statute and regulations are approved and implemented expeditiously, and to keep the ASC informed of the progress.

5. The District experienced problems with automated credential renewals, relying on appraiser affidavits for continuing education.

Previous Finding: The District began allowing appraisers to renew credentials via the Internet with its February 28, 2004 biannual renewal cycle. Appraisers choosing to renew online were required to sign an affidavit electronically, attesting to having completed the required hours of continuing education. The appraisers then were required to submit certificates of course completion to Promissor (the District's third-party service provider).

During our 2004 review, we asked Promissor to determine whether all appraisers renewing online provided the necessary certificates of completion for review. Promissor found that 142 of 285 appraisers (50%) failed to provide the supporting certificates.

On July 16, 2004, following our on-site review and at the Department's direction, Promissor sent letters to the 142 appraisers requesting documentation to support their claims of completing the continuing education requirements. The Department informed us that 116 appraisers, about 82%, submitted proof of the necessary continuing education. The remaining 26 appraisers failed to do so.

Current Status: We reviewed the files of the 26 appraisers who failed to respond to the continuing education audit. The District sent letters to these appraisers requesting documentation supporting their continuing education claims in mid-February 2005. The appraisers had 60 days in which to provide that documentation.

In response to the District's February 2005 letter, 22 of the 26 appraisers submitted documentation to the Board supporting their continuing education. While on-site, ASC staff confirmed the determinations for these 22 appraisers.

Of the four remaining appraisers who still had not provided needed documentation, one appraiser has since died. The Board and Department have not initiated any steps to take formal disciplinary action regarding the remaining three appraisers. Their names are not on the Board/Department's complaint log. Although these appraisers are Inactive on the National Registry, they still hold appraiser credentials with a February 28, 2006 expiration date. One is certified general and the other two are licensed appraisers.

Necessary Actions: To address this concern, the Board and Department need to:

- a. Immediately revoke, downgrade to the licensed level, or overstamp "Not eligible to appraise federally related transactions" on the credential of the certified appraiser. We encourage the Board also to take disciplinary action against the two licensed appraisers for failure to comply with continuing education requirements;
- b. Provide with its response to this letter comprehensive written procedures on how the Department will verify the continuing education claims of appraisers renewing by mail and online during the upcoming February 2006 renewal period; and
- c. Ensure that the continuing education audit process is consistent with ASC Policy Statement 10 F.

Please contact us if you have further questions.

Sincerely,

Virginia M. Gibbs
Chairman

cc: Honorable Anthony A. Williams, Mayor
Ronald Collins, Director, Office of Boards and Commissions
Cheryl Randall-Thomas, Branch Chief
Clifford Cooks, Applications Officer