

Appraisal Subcommittee

Federal Financial Institutions Examination Council

November 17, 2005

VIA Certified Mail

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 October 3, 2005 response to our August 18, 2005 letter regarding our follow-up review of the District of Columbia's ("District") real estate appraiser regulatory program ("Program") in Washington, DC, on May 15, 2005. As you know, our follow-up review focused on concerns identified in the Appraisal Subcommittee's ("ASC") January 5, 2005 field review letter. That letter provided a detailed discussion of serious weaknesses in the District's Program regarding compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended ("Title XI"). Following our May 15th follow-up review, the ASC concluded that the Board and Department had made very limited progress in addressing the Program's weaknesses. In fact, conditions had worsened in two key areas:

- The District did not investigate and resolve complaints against appraisers in a timely manner. In fact, most complaint cases remained unresolved; and
- The District's temporary practice fee was excessive and did 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.

Our August 18, 2005 follow-up review letter stated that we will return for a full field review of the Program in January-February 2006. The ASC also stated that if, at that time, the District had not made substantial and sustained progress toward resolving the weaknesses discussed in that letter and in our previous correspondence, the ASC would 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). A non-recognition determination would severely affect the District's commercial and residential lending activities. 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.

While your October 3, 2005 letter discusses some progress in addressing the Program's weaknesses, more definitive actions must be taken before our next full field review, which is scheduled for March 13-15, 2006. Otherwise, the ASC will initiate a non recognition proceeding against the District. We cannot overemphasize the need for the District to fully address and resolve the weaknesses in its Program and meet its obligations under Title XI.

By scheduling our next full field review for March 13-15, 2006, rather than earlier in the year, we will be able to evaluate the District's handling of its February 28th biannual renewal and the effectiveness of the remedial steps outlined in your October 3rd response. We also plan to observe your March 15th Board meeting. The remainder of this letter discusses our concerns, your response, and our expectations when we return in March 2006.

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.

Current Status: One of the Board's and Department's planned actions to resolve this concern is to restructure the Board to facilitate achieving a quorum. This restructuring requires amendment to the Board's enabling statute. Based on our November 19, 2004 meeting, the proposed statutory amendment was to have been submitted to the DC Council by March 23, 2005. Instead, it was not submitted to the Council until late October/early November 2005, almost one year from the November 2004 meeting in which the agreement regarding the action was reached.

The Department submitted a 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. According to your October 3, 2005 response, on September 27, 2005, the draft amendment was forwarded to the Mayor's office. (The Mayor's office is responsible for sending it to the DC Council.) We do not understand, and you provided no explanation, why it took five months from the time the Department received the AG Office's comments to submit the proposed amendment to the Mayor's Office. According to a November 7, 2005 email to ASC staff from Program Administrator Dorothy Thomas, the legislation now is with the City Council awaiting placement on the docket for consideration and action. You provided no estimate of when the legislation would be placed on the Council's docket or when Council action might be taken. You did not indicate that the Board or Department was making any effort to ensure prompt attention and adoption by the Council. Instead, you stated only that the Board will monitor the progress of the legislation and be prepared to testify on its behalf, if necessary. Given the gravity of potential non-recognition proceeding against the District, we would have expected the Board and Department to take a more assertive approach.

Necessary Action: We are very concerned that the draft statutory amendment is not progressing at the rate anticipated by the Board and Department. Much of the Program's long-term ability to achieve Title XI compliance hinges on the adoption of that legislation. We, therefore, expect the Board, Department, and Director Ronald Collins of the Mayor's office to take any and all steps to ensure that this legislation is advanced immediately. Please ensure that the Board and/or the Department provide Vicki Ledbetter of our staff weekly updates via Internet email regarding the status of this legislation, beginning with your receipt of this letter. After the amendment's adoption, we expect the Department and the Board to adopt any necessary implementing regulations on an emergency basis. We encourage you to solicit the assistance of Director Collins, who offered his help during our November 2004 meeting, to facilitate movement of the amendment through the Council and, if necessary, through the rulemaking process that would follow.

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.**

Current Status: As directed in our August 18, 2005 follow-up review letter, the Board/Department has been providing us with complaint logs on a monthly basis. You, however, have failed to address any of the other curative steps listed in our August 18th letter. Your October 3, 2005 letter only detailed the status of the now 42 cases received by the Board. Based on a November 7, 2005 email from Program Administrator Dorothy Thomas, there has been no change in the status of these cases since your October 3rd letter.

In our August 18th letter, the ASC directed the Board and Department 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; and
- c. Work closely with the Office of Attorney General and the contract investigators to ensure that adequate documentation and support is provide to the Attorney General to facilitate necessary actions.

Necessary Actions: Please continue sending us monthly complaint logs. Also, in a written response to us by December 31, 2005, please address in detail:

- a. What formal complaint investigation and resolution procedures have been developed and implemented;
- b. What resources you are devoting to the complaint investigation process to eliminate the backlog of aged cases; and
- c. What changes have been implemented to ensure a close working relationship between the Board, Department, and AG Office to ensure that adequate documentation and support is provided to the Attorney General to facilitate necessary actions.

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

Current Status: 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. Since our 2004 field review, the District again increased its temporary practice fee, from \$165 to \$215. The ASC directed the Board and Department to take the necessary actions to reduce the total fee to not more than \$150, as discussed in our August 18th letter. Your October 3rd letter only stated that the Board will revise the fee schedule when the legislation is final.

Necessary Action: The temporary practice fee is not established by statute. It appears that you intend to incorporate the temporary practice fee change into an "omnibus" rule package that would address all rule changes needed to implement the legislation discussed previously. That approach is unnecessary and unacceptable. The temporary practice fee must be lowered to \$150

as quickly as possible, on an emergency basis if necessary. It must not be held up by unnecessary inclusion in other potential rule changes. The Board and Department must immediately begin working with Director Collins of the Mayor's Office to take the necessary actions to lower the fee. By our March 2006 field review, at a minimum, we expect the Board and Department to have either accomplished this fee reduction or to have that reduction all but accomplished.

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

Current Status: According to your October 3, 2005 response, the curative legislation is included in the proposal submitted on September 27, 2005, to the Mayor's office.

Necessary Action: As noted regarding concern #1 addressed in this letter, please provide Vicki Ledbetter of our staff weekly updates via Internet email regarding the status of this legislation, beginning with your receipt of this letter. After the amendment's adoption, we expect the Department and the Board to adopt any necessary implementing regulations on an emergency basis.

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

Current Status: In our August 18th letter, we directed the Board and Department to take certain actions regarding three appraisers who failed the continuing education affidavit audits. In your October 3, 2005 response, you reported that the three appraisers were put on Inactive status on the National Registry and in the Department's licensing system. In September 2005, the Board voted to discipline the individuals and will seek a consent order including a 90-day suspension and \$1,500 fine for the certified general appraiser. The Board also will discipline the two licensed appraisers. In addition, the Board and Department developed a process for the February 2006 on-line credential renewal cycle that appears consistent with ASC Policy Statement 10. Under the new procedures, the Department will:

- a. Assign each appraiser a pin number;
- b. Include on an instruction sheet a notice regarding the District's continuing education requirements;
- c. Issue hardcopies of credentials only after the Department receives the necessary continuing education certificates; and
- d. Audit the continuing education claims of renewing appraisers within 60 days of the last late renewal period.

Necessary Actions: During our March 2006 field review, we will closely analyze how these procedures worked during the February 2006 renewal cycle, and we will evaluate your actions regarding the three non-compliant appraisers discussed above.

Please contact us if you have further questions.

Sincerely,

Ben Henson
Executive Director

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