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Appraisal Subcommittee

Federal Financial Institutions Examination Council

July 18, 2005

Ms. Kathryn S. Matayoshi, Director
Department of Commerce and Consumer Affairs
PO Box 3469
Honolulu, HI 96801

Dear Ms. Matayoshi:

Thank you for the Department of Commerce and Consumer Affairs' ("Department") cooperation and assistance in the May 31–June 1, 2005 Appraisal Subcommittee ("ASC") review of Hawaii's appraiser regulatory program ("Program"). Based on that review, Hawaii functions in a manner generally consistent with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, ("Title XI"). As discussed below, we identified deficiencies in two areas that need changes in your regulations.

- **The Department needs to update its regulations to reflect changes in Appraiser Qualifications Board ("AQB") criteria.**

While Hawaii, in practice, follows current AQB criteria, it still has not formally amended its regulations to reflect the January 2003 AQB criteria changes. We notified the Department of this concern in our July 10, 2002 field review letter. In its August 29, 2002 response, the Department represented that it was "currently working on amendments . . . and will implement the necessary changes." The Department failed to do so. While on site, Department staff provided us a copy of draft proposed regulations that would incorporate the required text regarding, among other things, the 15-hour National USPAP Course, the 7-hour National USPAP Update Course, and the use of AQB-certified USPAP instructors.

To finally cure this deficiency, the Department needs (1) to complete the adoption of its rule changes to incorporate the January 1, 2003 criteria changes; (2) to keep us informed of its status; and (3) to forward to us a copy of the regulations when they are adopted.

Also, the Department has not yet begun to address the regulatory changes that will be needed to implement the AQB's 2008 criteria changes that become effective on January 1, 2008. We strongly urge the Department to begin the process of determining how and when it will implement those criteria changes as regulatory changes take some time to accomplish.

- **The regulations do not adequately reference the Uniform Standards of Professional Appraisal Practice ("USPAP").**

Section 466K-4(a) of Hawaii's revised statutes for real estate appraisers ("Statute") states that all State credentialed appraisers "shall comply with the current uniform standards of professional appraisal practice approved by the director when performing appraisals in connection with a federally or non-federally related transaction." Section 16-114-88(a) of Hawaii's Administrative Rules attempts to implement this provision for federally related

transactions by stating that those standards are “the minimum appraisal standards of the appropriate federal financial institutions regulatory agency.” Under § 16-114-106(4) of the Rules, an appraiser who fails to comply with the agencies’ regulations may have his or her credential revoked, suspended, not renewed, or denied.

It appears that the Director never approved any “current uniform standards of professional appraisal practice” for appraisals in connection with non-federally related transactions. Therefore, no legally enforceable practice standards appear to exist concerning appraisals in non-federally related transactions. Nevertheless, Hawaii, in practice, applies USPAP to appraisals performed in federally related and non-federally related transactions. These inconsistencies between the Statute, regulations, and practice could expose the State’s enforcement program to successful legal challenge.

In accordance with Title XI and ASC Policy Statement 3, real estate appraisals generally must be performed in accordance with generally accepted appraisal standards as evidenced by the appraisal standards promulgated by the Appraisal Standards Board, *i.e.*, USPAP. That Policy Statement also requires States to either incorporate USPAP by general reference or take all necessary steps to ensure that the most current version of USPAP is incorporated by specific reference by the date that version becomes effective.

To eliminate potential enforcement difficulties, Hawaii needs to fully implement § 466K-4(a) of its Statute and amend its regulations to conform to ASC Policy Statement 3.

Please respond to our findings and recommendations within 60 days from your 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 available on our Web site.

Please contact us if you have further questions.

Sincerely,

Virginia M. Gibbs
Chairman

cc: Alan Taniguchi, Executive Officer