

□ □ □ □ □ □

Appraisal Subcommittee

Federal Financial Institutions Examination Council

October 5, 2005

Wade Lowhorn, Deputy Director
Indiana Professional Licensing Agency
402 W. Washington Street, Room W072
Indianapolis, IN 46204

Nicholas Rhoad, Director
Indiana Real Estate Appraiser Licensure and Certification Board
Indiana Professional Licensing Agency
402 W. Washington Street, Room W072
Indianapolis, IN 46204

Sheila O'Bryan McGrath
Director and Chief Counsel
Indiana Office of the Attorney General
Consumer Protection Division
302 W. Washington Street, 5th Floor
Indianapolis, Indiana 46204

Dear Messrs. Lowhorn and Rhoad and Ms. McGrath:

Thank you for your letter of October 20, 2005 regarding the Appraisal Subcommittee's ("ASC") May 2005 field review of Indiana's appraiser regulatory program ("Program"). We appreciate the Indiana Professional Licensing Agency's ("IPLA") and Office of the Attorney General's ("OAG") responsiveness. We will address each of the concerns identified during our 2005 review below. To monitor Indiana's continuing progress toward resolving these concerns, ASC staff will return for a follow-up review on January 11-12, 2006. We also plan to schedule a full review of the Program in the later half of 2006.

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

We appreciate the information contained in your September 18th letter regarding the Real Estate Fraud Investigation Fund ("Fund"); the new Deputy Attorney General, investigator, paralegal, and supervisory positions; and the in-house staff training in OAG. We also appreciate the updated information regarding the 253 cases that were outstanding at the time of our field review. Based on this information, it appears that IPLA and OAG have made some efforts to address the backlog of open complaint cases. We hope that these efforts are successful in improving Indiana's complaint investigation process and bringing it into compliance with Federal law.

We hope to see substantial improvement in the number of outstanding and aged complaint cases when we return for a follow-up review in January 2006, and at our next field review later in 2006. Should we not see substantial improvement by the time of our field review in late 2006,

ASC staff will recommend to the ASC that the ASC consider initiating a non-recognition proceeding under § 1118(b) of Title XI, 12 U.S.C. 3347(b) for Indiana's longstanding failure to comply with that Title.

You stated that the quarterly log would be sent under separate cover. Please forward a hard copy and an electronic copy of this log by October 31, 2005.

- **The Board does not process temporary practice permits in accordance with Title XI and ASC Policy Statement 5.**

In your August 10th letter, you assured us that the IPLA is working continuously to improve staff efficiency and the issuance of temporary permits within five days. In addition, you stated that a substantial number of temporary practice applications had to be returned to applicants because they submitted incorrect fees. Apparently, you are in the process of changing your application to reflect the correct fee amount. Finally, you asked us to provide you additional information regarding "what our program needs to implement to effectively issue temporary permits, what needs to be done if a licensee must extend their permit beyond six months, and a recommendation of how long temporary permits should last."

Your response, however, did not inform us whether you have ceased your practice of requiring temporary practitioners whose assignments take longer than six months to obtain and pay for a new temporary practice permit covering the same assignment. If you have not already ceased this practice, please do so immediately and confirm that fact to us in writing as soon as possible.

Regarding your informational request, we have included a copy of ASC Policy Statement 5, *Temporary Practice*, for your guidance. In short, temporary practice permits must be issued on an assignment basis, for a period not less than six months, for a fee not to exceed \$150, and must allow the appraiser to easily extend the authorized permit period, if needed. After you review ASC Policy Statement 5, please contact ASC Policy Manager Jenny Tidwell if you have specific questions about compliance. Please notify us in writing by October 31, 2005, regarding your specific plans for, and timeframes within which, you will accomplish full compliance with ASC Policy Statement 5.

- **Indiana accepts affidavits to support continuing education without a reliable means of validation, inconsistent with ASC Policy Statement 10 F.**

From your August 10th letter and our conversations with Director Rhoad, we understand that Indiana audited the continuing education claims of ten percent of the licensed and certified credentials that were renewed on or after January 1, 2004. This included 103 Licensed Residential, 63 Certified Residential, and 88 Certified General appraisers. Your audit letter required those appraisers to submit to IPLA proof of their continuing education claims by September 30, 2005. After that date, you stated that IPLA would forward to OAG for review and filing of Administrative Complaints any appraisers who failed to respond or conform to AQB criteria.

Please notify us in writing by October 31, 2005, of the results of this audit. Specifically, provide us with a spreadsheet or other listing identifying the appraisers selected for audit by

name and credential number. Please indicate whether the appraiser has responded to the audit notice and what determination has been made regarding AQB compliance for each appraiser.

In reviewing cases forwarded to the OAG for possible disciplinary action, it is important that consideration be given to the reason an appraiser failed the compliance audit. If an appraiser made a good faith mistake (*e.g.*, took a educational offering that he or she thought was acceptable but was determined not to be acceptable by IPLA), disciplinary action usually would involve requiring the appraiser to take the necessary education to meet AQB criteria. Should the review determine, however, that the appraiser did not have the necessary education and falsified his or her application, we would expect much more serious disciplinary action because we would have serious concerns regarding the appraiser's ethics. Ethical behavior goes to the very heart of appraisal practice. Any evidence of unethical or fraudulent activity on the part of an appraiser must be addressed seriously.

Once disciplinary actions have been taken regarding noncompliant appraisers, please forward to us as soon as possible copies of the relevant orders so that we can include that information on the National Registry. We expect that you will process these disciplinary actions expeditiously.

- **Indiana does not submit disciplinary action data to the ASC for inclusion in the National Registry.**

While we appreciate that you have sent us a list of disciplinary actions taken since May 2002, you did not address how you plan to ensure that future disciplinary actions will be reported to the ASC on a timely basis, as required by ASC Policy Statement 9 and noted in our July 18th field review letter. Please notify us by October 31, 2005, of the specific remedial procedures that you are establishing and implementing to assure future compliance with ASC Policy Statement 9.

This letter and any other correspondence between you and the ASC regarding this field review are now publicly available on our Web site.

Please contact us if you have any questions.

Sincerely,

Ben Henson
Executive Director

cc: Greg Zoeller, Chief Deputy
Indiana Office of the Attorney General

David Stewart, Deputy AG
Indiana Office of the Attorney General

Mr. Brian F. Conley, Chairperson
Indiana Real Estate Appraiser Licensure and Certification Board

Enclosure