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Appraisal Subcommittee

Federal Financial Institutions Examination Council

March 13, 2006

Charles E. Haire, Chairperson
Indiana Real Estate Appraiser Licensure
and Certification Board
Indiana Professional Licensing Agency
402 W. Washington, Room W072
Indianapolis, IN 46204

Dear Mr. Haire:

Thank you for your cooperation and your staff's assistance in the January 11-12, 2006 Appraisal Subcommittee ("ASC") follow-up review of Indiana's appraiser regulatory program ("Program"). In our July 18, 2005 field review letter, we notified the Indiana Real Estate Appraiser Licensure and Certification Board ("Board") that Indiana's Program was not in compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended ("Title XI"). We identified four areas of concern that needed prompt corrective action. During our follow-up review, we focused on these four concerns. In summary, while Indiana has made progress toward addressing our concerns, we find that Indiana's Program still does not comply with Title XI. This letter sets forth the ASC's findings and the actions that the Board needs to take to bring the Program into substantial compliance with Title XI.

ASC staff will return for our next field review on December 12-14, 2006. Should we not see substantial improvement at that time, ASC staff will recommend 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.

Previous Findings, Current Status, and Recommended Action

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

Previous Finding: ASC staff found that Indiana'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. ASC Policy Statement 10 provides that State appraiser regulatory agencies need to process complaints on a timely basis and that, absent special documented circumstances, final State administrative decisions regarding complaints should occur within one year of the complaint filing date.

Current Status: Since our May 2005 field review, the Attorney General's office ("AG") has used Investigative Fund monies to hire a Deputy Attorney General who is dedicated to Board matters, and a supervising complaint analyst. The additional staff has allowed the Section Chief to dedicate more time to handling appraiser-related complaints. The AG currently provides monthly

reports to the Board regarding the status of all complaints. Of the 241 complaints that were open at our May 2005 field review, 163 (68%) were more than one year old. At our January 2006 follow-up review, 45 of these open complaints had been closed and 26 have had administrative complaints filed with the Board and are scheduled for hearing or settlement conferences. During this same time period, the AG's office received 128 new appraiser-related complaints, bringing the total number of outstanding complaints to 277, an increase from the 241 cases outstanding at our 2005 field review. Cases outstanding for more than one year decreased slightly from 163 to 157.

During our follow-up review, ASC staff met with the AG Director Sheila O'Bryan McGrath to discuss the AG's plans for continued progress in alleviating the case backlog while effectively managing newly received complaints. She stated that, at the beginning of January 2006, the AG's office hired two additional investigators and that progress had been made regarding computerizing complaints accurately for tracking, hiring and training personnel, and processing cases through the investigative stage. Ms. McGrath expressed confidence that, when the ASC returns for its next field review, the case backlog will be substantially reduced.

Necessary Action: The ASC recognizes the AG's efforts to account for and track complaints and to hire and train additional personnel. Nevertheless, the current status of Indiana's complaint investigation and resolution program fails to meet Title XI's requirements regarding State supervision of appraisers and timely complaint investigation and resolution. When we return for our field review in December 2006, we expect to find a substantial reduction in the number of aged complaint cases and a complaint investigation and resolution program in which complaints are processed in a timely manner as provided in ASC Policy Statement 10. We also remind the Board and AG office to continue providing to Jenny Tidwell at jenny@asc.gov electronic copies of complaint logs on a quarterly basis.

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

Previous Finding: During our 2005 review, ASC staff found that Indiana failed to comply with the temporary practice provisions of Title XI and ASC Policy Statement 5 in two ways. First, the State did not process completed temporary practice applications within five business days, and second, Indiana failed to provide temporary practitioners with an easy, no cost extension method.

Current Status: Since our May 2005 field review, Indiana processed 129 temporary practice applications. One hundred twenty six of those applications (98%) were processed within five business days of receipt. The Board no longer requires temporary practitioners whose assignments take longer than six months to obtain and pay for new temporary practice permits covering the same assignments. The Board has adopted a new policy that allows temporary practitioners to apply in writing for one easy permit extension at no additional fee. Also, the Board has drafted proposed rule amendments that, if adopted, would extend the time period of temporary practice permits from six months to a maximum of one year, depending on the length of the assignment. Although the proposal does not contain language enabling temporary

practitioners to obtain an easy extension, we believe the proposed language would meet the intent of Title XI because a six month extension is effectively built into the one year temporary practice authorization.

Necessary Action: We recognize the Board's efforts to bring this portion of the Program into substantial compliance with Title XI and ASC Policy Statement 5 by processing complete temporary permit applications within five business days of receipt and providing temporary practitioners with an easy, no cost extension method.

If the proposed temporary practice rule amendment is adopted, we believe that Indiana's temporary practice process will meet Policy Statement 5's spirit and intent because the initial term of the permit would be one year instead of six months. Therefore, the permit, as issued, would contain a "built in" six-month extension of the initial permit. Please provide us with a copy of the amendments once they are adopted.

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

Previous Finding: In our 2005 review, we found that Indiana renewed appraiser credentials based on appraisers' sworn affirmations that they had met the State's continuing education requirements. Indiana's appraisers renew their credentials in even-numbered years on January 1st. During that review, ASC staff discovered that the Board failed to conduct any continuing education audits following the January 1, 2004 renewal. At the time of the January 2004 renewals, ASC Policy Statement 10 provided that States, at a minimum, should have a reliable means of validating both the education and experience credit claimed for certification or licensing. Indiana failed to have such validation.

In our July 18, 2005 field review letter, the ASC instructed the Board to:

1. Prepare a listing of all certified appraisers whose credentials were renewed on or after January 1, 2004;
2. Audit the continuing education claims of at least ten percent of the identified appraisers by September 30, 2005;
3. Identify appraisers who failed to conform to Appraiser Qualifications Board ("AQB") criteria and take appropriate disciplinary actions against those appraisers. For certified appraisers who do not currently meet AQB criteria, immediately place those appraisers in Inactive status for the National Registry and begin the necessary steps to downgrade the appraisers to non-certified classifications; and
4. Conform its current certified credential renewal practices to ASC Policy Statement 10 F., which became effective January 1, 2005.

Current Status: Since our 2005 review, Indiana audited ten percent of the appraisers who renewed their credentials on or after January 1, 2004. That audit included 139 certified appraisers. Of the 139 certified appraisers audited, 11 failed to provide proof of compliance with continuing education requirements. Files regarding these 11 appraisers had been forwarded to the

AG for possible disciplinary action. Once disciplinary actions are taken regarding these appraisers, the Board will forward copies of the relevant orders to the ASC so that we can make appropriate notations regarding those actions on the National Registry. The primary purpose of the continuing education affidavit audits is to determine whether there is reasonable cause to believe that appraisers complied with the continuing education requirements. When the State determines that one or more appraisers did not comply with those requirements, the State needs to take disciplinary actions promptly and to publicize those actions to the general appraiser population. Deterrence is a critical component in an affidavit-audit process.

Necessary Action: To continue resolution of this concern:

1. When the Board determines that a certified appraiser does not meet the AQB's minimum continuing education criteria, the Board and AG must take appropriate action in the most expeditious manner to suspend the appraiser's eligibility to perform appraisals in federally related transactions;
2. The Board must notify the ASC expeditiously, by email or fax, of that fact so that the appraiser's record on the National Registry can be updated appropriately;
3. The Board needs to report to the ASC the following information regarding each of the 11 certified appraisers who failed the continuing education audit: (1) name; (2) credential number; (3) initiation date of disciplinary action; (4) requested sanction; (5) current case status; and (6) anticipated or actual case resolution date;
4. The Board or AG must determine whether the appraiser's failure to conform to AQB criteria resulted from a good faith mistake on the appraiser's part, or whether the appraiser knowingly misrepresented his or her eligibility for renewal. Intentional falsification of a government document (*i.e.*, appraiser credential renewal application) is a serious matter which calls into question the individual's ethics, a core requirement for impartial appraisal practice. Should any instances of intentional falsification be determined, we expect the State to take equally serious disciplinary action; and
5. The Board must complete each continuing education affidavit audit within 60 days from the date the renewed credential is issued. Since Indiana appraisers renewed on January 1, 2006, the audit of the current group of renewals must be conducted by the beginning of March 2006. The Board needs to report to Jenny Tidwell, via email, the results of that audit by no later than March 31, 2006.

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

Previous Finding: ASC staff found that Indiana failed to report disciplinary actions to the ASC for inclusion on the National Registry. ASC Policy Statement 9 requires States to report disciplinary actions to the ASC at least monthly.

Current Status: During the follow-up review, ASC staff found that the Board now forwards all disciplinary actions in a timely manner via Internet email.

Necessary Action: None.

Please contact us if you have any questions.

Sincerely,

Ben Henson
Executive Director

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

Wade Lowhorn, Deputy Director
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