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Appraisal Subcommittee

Federal Financial Institutions Examination Council

October 16, 2006

Mr. George F. Brooks III, Chairman
New Hampshire Real Estate Appraiser Board
State House Annex, Room 426
25 Capitol Street
Concord, NH 03301-6312

Dear Mr. Brooks:

Thank you for the cooperation and assistance of the New Hampshire Real Estate Appraiser Board (“Board”) in the August 24-25, 2006 Appraisal Subcommittee (“ASC”) review of New Hampshire’s real estate appraiser regulatory program (“Program”). Based on our review, we find that New Hampshire’s Program fails to comply with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (“Title XI”).

The Program has serious weaknesses, particularly in the areas of complaint investigation and resolution. Because of those weaknesses, we will perform a follow-up review in six to nine months to evaluate the Board’s progress toward resolving our concerns. If the Board fails to show substantial progress towards curing the weaknesses discussed in this letter, the ASC will consider initiating a non-recognition proceeding against the State under § 1118 of Title XI, 12 U.S.C. 3347. A non-recognition determination by the ASC would have a substantial adverse effect on the State’s real property appraisers and on commercial and residential lending activities State-wide.

- **New Hampshire fails to comply with Title XI and ASC Policy Statement 10 by not investigating and resolving complaints in a timely manner.**

Under Title XI, States must adequately supervise their appraisers. An effective complaint investigation and resolution program is a critical element in adequate supervision. ASC Policy Statement 10E provides that States need to investigate and resolve complaints in a timely manner. Complaint resolution generally should occur within one year of complaint receipt. New Hampshire fails to meet these provisions.

During our 2003 field review, we found that New Hampshire’s complaint investigation and resolution program did not comply with Title XI and ASC Policy Statement 10 because the Board failed to investigate and resolve complaints in a timely manner. In response to our field review letter, the Board stated its commitment to resolving this concern. During our current review, we found that the Board failed to resolve the weaknesses in the program.

For the past several years, New Hampshire received approximately 17 appraiser-related complaints per year. At the time of our current field review, 17 complaints were listed on Board records as outstanding. Of these, five complaints had been outstanding for more than one year. A review of Board records, however, revealed that these statistics were misleading. Just prior to our field review, the Board closed 11 of its oldest cases as being “too old.” These complaints

should not have been dismissed. Adding these complaints to the list of outstanding complaints yielded 28 outstanding complaints, 16 of which had been outstanding for more than one year.

While on site, ASC staff reviewed the 11 cases dismissed as “too old.” In general, it appeared that the Board simply stopped pursuing these cases. For example, in one case, a complaint filed in May 2004, the file contained an appraisal review performed by a Grievance Committee member. That review indicated numerous USPAP violations and an unsupported value. The Board sent the respondent several proposed settlement offers, but the appraiser did not accept a settlement. In August 2005, the Board sent a Notice of Hearing to the respondent. No hearing was ever held, and no settlement was reached. Based on the case file, no actions had been taken since August 2005.

To resolve this concern, the Board needs to:

1. Reopen all complaints that were dismissed at the July 12, 2006 Board meeting as being “too old,” and investigate and resolve each complaint on an expedited basis;
 2. Forward to the ASC a written, comprehensive plan detailing how the Board will eliminate the outstanding backlog of cases on an expedited basis, and how the Board will process future complaints in a timely manner in accordance with ASC Policy Statement 10; and
 3. Send to the ASC a complaint log on a quarterly basis. Include in the complaint log, specific notations regarding the status of each of the 11 reinstated cases.
- **New Hampshire failed to include supporting documentation in the complaint files.**

ASC Policy Statement 10E requires a State to ensure that its program for processing and investigating complaints and sanctioning appraisers, among other things, is administered in a well-documented manner. Under the Policy Statement, “well documented” means that relevant documentation pertaining to a matter exists, and that it will enable ASC staff to understand the facts and determinations in the matter and the reasons for those determinations.

ASC staff reviewed 30 complaint files. Most files lacked sufficient supporting documentation. Most files did not contain an investigative report or an appraisal review report. When ASC staff discussed these concerns with the Board, the Board members stated that their decisions were based on the Grievance Committee member’s verbal report regarding the complaint. We discovered that an appraisal review form, previously used by the Board, had been discontinued for some time.

To resolve this concern, the Board needs to establish and implement written procedures to ensure that each complaint file contains sufficient documentation to support the investigation and disposition of the complaint. Please forward to us a copy of those written procedures.

- **Some disciplinary actions imposed by the Board appeared to be inconsistent.**

Because of the lack of supporting documentation in the complaint files, it was difficult to determine whether all disciplinary actions were fair and equitable. Nevertheless, we found three

cases that had similar violations where the Board's actions appeared inconsistent. These cases involved supervising appraisers who failed to state in their appraisal reports that another appraiser provided significant assistance in performing the appraisal. The circumstances and violations were very similar in each case, yet the resulting disciplinary actions varied considerably.

ASC Policy Statement 10E requires a State to ensure that its program for processing and investigating complaints and sanctioning appraisers, among other things, is administered in an equitable manner. Absent special documented circumstances, substantially similar cases must result in similar dispositions.

The Board acknowledged our concerns and stated that it recently began tracking sanctions with a view towards creating a disciplinary matrix. Whether the Board creates such a matrix or uses other methods, the Board needs to ensure that it administers its disciplinary process in an equitable and consistent manner. Please forward to us your plans regarding how you intend to accomplish these results.

- **The Board failed to appropriately address a complaint against a Board Member.**

The Board received a complaint against one of its members on February 23, 2005. In the past, the Board's policy had been to immediately forward complaints against Board members to a third party for investigation. In this case, however, the Board apparently chose not to investigate the complaint. At the time of our August 2006 field review, the Board had not taken any action regarding the complaint.

ASC Policy Statement 1 provides that board members must act impartially and not give preferential treatment to any individual. It appears that the Board gave preferential treatment by not treating the complaint against the Board member in the same manner as complaints involving other appraisers. Given board members' roles in the State's appraiser regulatory efforts, it is important that the Board seek to avoid even the appearance of preferential treatment for board members. Otherwise, public faith in the State's Program very well might suffer and make it difficult for the Board to perform its responsibilities under Title XI.

To address this concern, the Board needs to take steps immediately to investigate and resolve the complaint against the Board member fairly and expeditiously. Also, the Board needs to establish and follow an appropriate complaint investigation and resolution process for complaints against Board members to ensure that those complaints are handled expeditiously, fairly, and impartially.

- **Board regulations specify excessive fees for temporary practice permits.**

The Board's regulations regarding the temporary practice fees fail to comply with Title XI and ASC Policy Statement 5. The fee is based on an appraisal report basis, rather than an assignment basis. The fee is \$150 for one appraisal report, \$250 for two reports, and \$350 for three reports, regardless of whether the appraisals and resulting reports are part of the same assignment. This fee structure creates situations in which the fees assessed by the Board could exceed \$150 per assignment.

Title XI prohibits a State from imposing “excessive” fees for temporary practice and charges the ASC with determining what fees are excessive. As provided in ASC Policy Statement 5, the ASC has determined that fees exceeding \$150 per assignment are excessive.

We previously noted this deficiency in our September 12, 2003 field review letter. In response, the Board voted to amend its fee structure so that the fee for temporary practice was \$150 per assignment, regardless of the number of appraisals. While New Hampshire implemented the new fee structure in practice, the Board failed to adopt corresponding changes to its regulations. To comply with Title XI and ASC Policy Statement 5 and conform your regulations to existing practice, the Board needs to amend its regulations as soon as possible.

Unless otherwise noted above, please respond to our findings and recommendations within 60 days from the date of this letter. Until the expiration of that time 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 made available on our Web site.

Please contact us if you have any questions.

Sincerely,

Virginia M. Gibbs
Chairman

cc: Maureen Tully, Administrative Assistant