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Appraisal Subcommittee

Federal Financial Institutions Examination Council

January 18, 2007

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 your letter of December 12, 2006 regarding the Appraisal Subcommittee's (ASC) August 24-26, 2006 field review of New Hampshire's real estate appraiser regulatory program ("Program"). We appreciate the New Hampshire Real Estate Appraiser Board's ("Board") responsiveness. We will address each of the concerns identified during our 2006 field review below.

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

In our October 16, 2006 field review letter, we described in some detail New Hampshire's longstanding inability to investigate and resolve complaints on a timely basis. We noted that 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.

During our August field review, 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 ASC instructed the Board 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.

In response to number 1, your December 12, 2006 letter noted that the Board reopened and are actively investigating eleven complaints that were dismissed at the July 12, 2006 Board meeting.

In response to number 2, you noted that the Senate has passed a bill that allows the Board to retain fines in a separate account, which can be used on investigations of complaints. To that end you have enlisted the aid of appraisers on a part time basis to investigate outstanding complaints. Additionally, the Board has initiated a job posting for a qualified individual to assist in the complaint investigation and resolution process. Finally, you state that the Board will be taking steps to establish and follow an appropriate investigation and resolution process in the near future. We noted that in your Corrective Action Plan you indicate a target date of February 15, 2007, to complete a comprehensive plan on how the Board will eliminate the backlog of cases and a written statement on how the Board will process future complaints in a timely manner. Please provide the ASC with copies of these documents by March 1, 2007 along with a complaint log as requested in number 3. The ASC will pay particular attention to this concern during our follow-up review scheduled in May.

- **New Hampshire failed to include supporting documentation in the complaint files.**

Our field review letter directed the Board to establish and implement written procedures to ensure that each complaint file contains sufficient documentation to support the investigation and disposition of the complaint, and to forward to us a copy of those written procedures.

In your response, you noted that the Board implemented a program for more documentation to be included in the complaint files. We noted that in your Corrective Action Plan you indicate a target date of January 25, 2007, to have developed written procedures to ensure that case files contain sufficient documentation to support investigation and resolution. Please forward a copy of these written procedures to us by March 1, 2007.

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

In our October 16, 2006 field review letter, we described in some detail 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. The Board was instructed to forward to the ASC plans regarding how they intend to ensure that it administers its disciplinary process in an equitable and consistent manner.

We noted that your Corrective Action Plan indicates a target date of February 28, 2007 for a matrix of sanctions to be completed. It further indicates March 10, 2007, as a target date to

forward the Board's plan for administering the disciplinary process fairly. Please forward to the ASC copies of the matrix and plan as soon as it is completed.

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

During the August field review, ASC staff found that 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.

In our October 16, 2006 field review letter, ASC instructed the Board to take steps immediately to investigate and resolve the complaint against the Board member fairly and expeditiously. Also, the Board was instructed 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.

In your response letter, you noted that the Board hired an independent appraiser/investigator to investigate the complaint. We noted in your Corrective Action Plan that you have a target date of January 25, 2007, to present to the Board a plan for handling future complaints against Board members. Please provide a copy of the plan on how the Board will handle future complaints against Board members by March 1, 2007.

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

In our October 16, 2006 field review letter we noted that 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. ASC instructed the Board to amend its regulations to comply with Title XI and ASC Policy Statement 5 and conform regulations to existing practice.

We are pleased that the Board has taken steps to resolve this issue by drafting amendments to its regulations. Please keep ASC staff informed of the status of these regulations.

Our field review letter, your response, and any other previous correspondence between us regarding the field review now will become publicly available on our Web site.

Please contact us if you have further questions.

Sincerely,

Ben Henson
Executive Director

cc: Maureen Tully, Administrative Assistant