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Appraisal Subcommittee

Federal Financial Institutions Examination Council

June 26, 2003

John Wright, President
Nevada Commission of Real Estate Appraisers
Department of Business and Industry
788 Fairview Drive, Suite 200
Carson City, NV 89701-5453

Dear Mr. Wright:

Thank you for your cooperation and your staff's assistance in the May 20-21, 2003 Appraisal Subcommittee ("ASC") review of Nevada's appraiser regulatory program ("Program"). While most of your Program appears effective, we identified two concerns that need the attention of the Commission and the Department of Business and Industry ("Department"). Our findings revealed that deficiencies in your complaint investigation and resolution program need to be rectified before your Program can be fully compliant with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended ("Title XI").

- **Nevada continues to have a significant backlog of unresolved complaint cases.**

In our June 26, 2000 field review letter, we expressed our concern that Nevada was not investigating and resolving complaints in a timely manner. Following our field review, the Commission and Department made several changes in their complaint investigation and resolution program that appear to have been effective. At the time of this review, despite these changes, many complaints have not been investigated and resolved in a timely manner, certainly not within the one-year guideline provided in ASC Policy Statement 10.

Of the 199 complaints filed between July 2000 and May 2003, 123 remained unresolved. Many cases have been outstanding for more than one year. Further, 87 cases await initial review. We discussed the number of outstanding complaints with Appraisal Officer Brenda Kindred-Kipling and Real Estate Division Administrator Gail Anderson. Both agreed that the backlog results primarily from Ms. Kipling's dual role as Program administrator and staff investigator. Given her Program administrator responsibilities, she did not have enough investigation time to handle the complaint workload. Administrator Anderson recently filed a request for an additional position in the Real Estate Division. She stated that, if approved, she would fill it with an investigator for appraiser-related complaints.

To effectively manage its complaint workload, Nevada needs additional investigative resources. We made this recommendation in our previous field review letter. While the changes Nevada made to its program following our previous review have been effective, the number of complaints received and the number outstanding continue to increase. Additional investigative resources are critical to the State's ability to investigate and resolve complaints in a timely manner. The Commission and Department need to make every effort to obtain necessary investigative resources.

- **Nevada’s three-year statute of limitations regarding certain appraiser disciplinary actions could adversely impact the State’s ability to effectively enforce provisions of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (“Title XI”).**

Nevada Revised Statute (“NRS”) 645C.510(3) requires the Commission to give respondents notice within three years of the date of the “commission or omission of the alleged grounds to suspend, revoke, or deny the renewal of the certificate or license.” In April 2003, the Commission voted to close a case involving serious allegations of fraud because the appraisal was prepared more than three years before the appraiser received notice of the Commission’s intent to conduct a hearing to consider suspending or revoking the appraiser’s credential.

At your May 2003 meeting, your Attorney General representative provided an opinion that concluded that the date the act of “commission or omission” took place is the effective date of the appraisal. This means that users of appraisal services and others must identify a problem and file a complaint, and the State then must conduct an investigation and issue a notice of intended action within three years of the date the appraisal was prepared.

Our concern arises from the fact that many appraisal-related complaints are generated when a subsequent action takes place that calls the appraisal into question. These subsequent actions include: the homeowner’s attempt to sell or refinance the property or request release from private mortgage insurance premiums; an examination of a financial institution by a Federal or State regulator; State reviews of sample appraisals when an individual applies for an appraiser credential or upgrade; Federal or State investigations into fraud and flipping allegations; and Fannie Mae and Freddie Mac quality assurance reviews. Often, these events occur months or years after the appraisal was performed. Added to this time element is the fact that the State then must perform an investigation before determining whether there is cause to issue a notice of intent. The investigation could take several months to more than a year. As a result, significant cases could be dismissed, not on merit, but solely because the notice of intent was not issued within the statutory time limitation.

The purpose of Title XI is to protect the Federal financial and public policy interests in real estate related financial transactions by subjecting the conduct of appraisers to effective supervision. Such a strict interpretation of the statute of limitations does not allow the Commission to handle adequately and appropriately complaints from many sources, including the Federal financial institutions regulatory agencies, the Department of Housing and Urban Development, Fannie Mae, and Freddie Mac.

We were pleased that the Commission expressed similar concerns at its May 2003 meeting and voted to continue accepting complaints involving older appraisal activities, although disciplinary actions might have to be limited to less than revocation or suspension.

To ensure that this statute of limitations does not adversely affect the State’s ability to supervise appraisers, the Commission and Department need to:

- 1) Develop and implement an effective process to identify promptly any complaint that might be affected by the statute of limitations. These time-sensitive complaints should be

reviewed quickly to determine the probable level of violation. Complaints that appear to have fraud and/or ethical considerations should be prioritized and tracked to ensure that a notice of intended action is issued within the statutory time period; and

- 2) Take the appropriate steps to try to amend this provision during the next (2005) legislative cycle by either extending or eliminating the limitation period or by defining the start of the statutory period from the discovery of the action or omission.

Within 60 days from the date of this letter, please notify us of your plans to address the concerns identified in this letter. If we can be of any help in presenting your case for additional investigative resources, please let us know.

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 made available on our Web site.

If you have any questions, please contact us.

Sincerely,

Steven D. Fritts
Chairman

cc: Brenda Kindred-Kipling, Appraisal Officer
Gail Anderson, Administrator, Real Estate Division