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# Appraisal Subcommittee

*Federal Financial Institutions Examination Council*

August 17, 2004

Mr. D. Rex Bryce  
Chair, Board of Real Estate Appraisers  
and  
Mr. Keith Stack  
Deputy Secretary of State  
Department of State  
84 Holland Avenue  
Albany, NY 12208-3490

Dear Mr. Bryce and Mr. Stack:

Thank you for the cooperation and assistance of the Board of Real Estate Appraisers (“Board”) and the Department of State (“Department”) in the June 22-24, 2004 Appraisal Subcommittee (“ASC”) review of New York’s appraiser regulatory program (“Program”).

New York’s Program is not in compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (“Title XI”) because of several areas of concern that we identified during our review. Some of these concerns have existed since our previous review in 2001. You need to resolve these concerns expeditiously. To assess the State’s progress, ASC staff will return for a follow-up review in approximately six months.

- **New York does not always conform to Appraiser Qualifications Board (“AQB”) criteria when issuing certified appraiser credentials.**

In July 2000, the AQB adopted a criteria Interpretation stating that successful completion of a State credential examination is valid for a period not to exceed 24 months. We reviewed the records of the 443 certified residential and certified general appraisers issued credentials after July 1, 2000. It appears that 24 appraisers were issued certified credentials based on examinations taken more than 24 months prior to issuance. This is contrary to AQB criteria.

To address this deficiency the Department needs to take the following actions:

1. To confirm our findings, perform a review of its records regarding the 443 individuals issued certified credentials since July 1, 2000;
2. Within 30 days of receipt of this letter, determine whether the examination used to support each certified credential was passed more than 24 months prior to issuance of the credential;
3. Require all certified appraisers whose examinations failed to meet AQB criteria to successfully complete the appropriate examination within 90 days from the Department’s

receipt of this letter;

4. Take the necessary steps to downgrade to the licensed level any certified appraiser who fails to successfully complete the appropriate examination within the 90-day period; and
5. Initiate necessary amendments to State statutes, regulations, and/or Board policies to ensure ongoing compliance with this AQB Interpretation.

- **A number of complaint cases have been outstanding for more than one year.**

ASC Policy Statement 10 provides that, absent special circumstances, final State administrative decisions regarding complaints should occur within one year of the complaint filing date. At the time of our review, 49 complaints had been in process for more than one year. Twenty-eight of those complaints dated from 2002 and 2003. The remaining 21 were from 2001, or earlier. The oldest open complaint was received in 1997. Our staffs jointly determined that only 19 of the 49 cases were still under investigation. The remaining 30 cases had been referred to legal counsel and many could not be located.

To address this concern, the Department needs to:

1. Locate and retrieve the 49 old complaints and expedite their investigation and resolution;
2. Ensure that, absent special documented circumstances, complaints are investigated and resolved within one year of receipt;
3. Establish appropriate policies and procedures to ensure that complaints are investigated and resolved in a timely manner, and that cases referred to legal counsel are tracked to ensure timely action; and
4. Provide us with quarterly updates regarding your progress.

- **New York's complaint tracking system is not effective.**

The Department's complaint tracking system should provide the means to monitor the status and location of each case. Department staff, however, does not always record actions taken and referrals made to other departments or individuals. This significantly limits the system's effectiveness. This was particularly evident during our review when your staff attempted to locate and determine the status of a number of outstanding complaints. In our previous field review, in 2001, we noted the Department's inability to locate certain case files. This deficiency has not been resolved.

The Department needs to use the existing complaint tracking system effectively to track all current and future complaints from receipt by the Department until final disposition. Therefore, the Department needs to modify its policies and/or procedures to ensure that the tracking system effectively monitors the status and location of each case.

- **New York has not reported appraiser disciplinary actions to the ASC for inclusion in the National Registry.**

The Department does not have a routine system to provide the ASC with appraiser disciplinary information. As a result, a number of suspensions, voluntary surrenders, and revocations were not reported to the ASC for inclusion in the National Registry. As provided in ASC Policy Statement 9, Information Sharing, the Department needs to take the appropriate steps to ensure that all final disciplinary actions are reported promptly to the ASC.

With your response to this letter, the Department needs to submit to the ASC a listing of all disciplinary actions taken by the Board since its inception. This will enable us to reconcile New York's disciplinary actions against those listed in the National Registry database. For each disciplinary action on the listing, please include the following:

- Credential number and name of the appraiser;
- Type of disciplinary action taken;
- Effective date of the action; and
- Expiration date, if applicable.

In your response to this letter, also include your plans to systematically report future disciplinary actions to the ASC.

- **The Department does not validate the continuing education claims of appraisers who renew certified credentials.**

New York requires renewing appraisers to submit affidavits attesting to the required hours of continuing education. The Department implemented this requirement to handle New York's large number of appraisers. The Department's written policy requires staff to randomly audit 30 renewal applications each month. We understand, however, that budget constraints prompted suspension of the auditing program in February 2002. We understand that Division of Licensing Director Joseph Amello stated that the Department plans to resume the audit function in September 2004.

ASC Policy Statement 10 provides that States, at a minimum, should have a reliable means of validating education claimed for renewal. The Department needs to reactivate its continuing education affidavit audit program immediately and promptly modify the program, as necessary, to comply with forthcoming ASC Policy Statement 10 revisions regarding the use of affidavits. ASC staff discussed the proposed changes to Policy Statement 10 with Department staff during the review.

- **Temporary practice permits are not always issued within five business days as prescribed by ASC Policy Statement 5.**

Our review revealed that, since our previous review, New York issued temporary practice permits in a more timely manner. However, many applications took 8-10 business days to

process. ASC Policy Statement 5 requires States to take no more than five business days, after receipt of a completed application, to act on the application.

The Department needs to evaluate and further streamline its temporary practice application process. In your response to this letter, please outline your plans to ensure that completed temporary practice applications are processed within five business days of receipt.

- **The Board had not adopted the 2004 edition of the Uniform Standards of Professional Appraisal Practice (“USPAP”).**

At the time of our review, New York’s Program was operating under the 2003 version of USPAP, which the Board adopted in August 2003. It appears that the Board had made no effort to adopt the 2004 edition prior to our field review. At its June 2004 meeting, the Board voted to adopt the 2004 USPAP. Your legal counsel and support staff, however, stated that it would take at least six months to complete the necessary regulatory change. Consequently, this regulatory revision likely would not be in place before 2005. By that time, the Board will need to adopt and implement a regulation referencing the 2005 version of USPAP.

Historically, New York has failed to adopt USPAP in a timely manner. We had hoped that an annual Memorandum of Understanding (“MOU”) process agreed to with the Appraisal Foundation in 2001, would resolve the USPAP reproduction/copyright concerns. We have talked with Foundation Executive Vice President David Bunton who assures us that the Foundation would promptly execute an MOU with the State, and that he is willing to work with the Department to facilitate resolution of this issue.

Department Attorney Bruce Stuart reported to ASC staff that the Board had not adopted the 2004 USPAP because of budgetary constraints. He stated that the cost of amending the regulations and purchasing approximately 30 copies of USPAP was considered too expensive. However, based on your staff’s estimates, it appears that the cost would be less than \$1,000.

In accordance with ASC Policy Statement 3, if State laws prohibit the State agency from incorporating USPAP by general reference, the agency must take all necessary steps to ensure that the most current USPAP version is adopted and implemented in a timely manner each year. That date is typically January 1<sup>st</sup>. Beginning with the 2005 edition, the Department and Board need to develop and implement the necessary procedures to enable adoption of future versions of USPAP in a timely manner. Please include in your response an explanation of how the State will fund and expedite this process.

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.

If you have any questions, please contact us.

Sincerely,

Virginia M. Gibbs  
Chairman