

Appraisal Subcommittee

Federal Financial Institutions Examination Council

April 12, 2005

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

Dear Mr. Bryce and Mr. Stack:

Thank you for your cooperation and your staff's assistance in the January 31, 2005 Appraisal Subcommittee ("ASC") follow-up review of New York's appraiser regulatory program ("Program"). In our August 17, 2004 field review letter, we advised the New York Department of State ("Department") and the Board of Real Estate Appraisers ("Board") that the Program was deficient in seven areas, and that corrective actions were necessary. During our follow-up review, we focused on these seven concerns. We will be performing a full field review of your Program in the latter half of 2005. This letter sets forth the ASC's findings and recommendations resulting from our follow-up review.

Previous Findings, Current Status, and Necessary Actions

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

Previous Finding: 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. During our 2004 field review, we reviewed the records of the 443 certified residential and certified general appraisers issued credentials after July 1, 2000. It appeared that 24 appraisers were issued certified credentials based on examinations taken more than 24 months prior to issuance. This is contrary to AQB criteria.

Current Status: The State reviewed its files and initially identified 27 individuals who had received credentials based on outdated examinations. Upon further investigation, New York determined that 10 of the 27 appraisers were in compliance with the AQB's Interpretation and did not need to retake the exam. We reviewed and concurred with New York's determination.

On November 29, 2004, New York provided a status report to us regarding the 17 appraisers who needed to retake the examination. Twelve appraisers retook and passed the examination; two appraisers failed the examination; and three appraisers refused to retake the examination. The five appraisers who failed or refused to retake the exam were downgraded to the State licensed level effective November 24, 2004. New York required these appraisers to return their certified credentials. The State then issued new credentials reflecting their licensed status. New York

coordinated with ASC staff to ensure that the National Registry reflected the revised status of these appraisers.

We appreciate New York's prompt attention to this concern.

Action: None.

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

Previous Finding: 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 2004 field 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 of the case files could not be located.

Current Status: Senior License Investigator Paul Matthews and Compliance Officer Bill Stavola located and provided a status update for 42 of the 49 complaints. Mr. Stavola stated that he believed that the seven missing cases were from the Department of Housing and Urban Development ("HUD"). At the time the State received them, the Board did not know how to treat violations of HUD regulations that were not necessarily violations of New York State law. He believed that the Board closed the cases because HUD already had sanctioned the involved appraisers.

At the time of our follow-up review, New York had 47 outstanding cases in process for more than one year. We were advised that 24 of the 47 cases were scheduled for hearings. The remaining 23 cases remained under investigation. The oldest case was from March 2001. New York has made very limited progress in resolving long outstanding complaint cases and has reduced the number of cases outstanding for more than one year only from 49 to 47.

Action: The Board and Department need to develop and implement a comprehensive complaint investigation and resolution policy that will facilitate investigation and resolution of complaints within one year of receipt. Please forward a copy of that policy to us by June 30, 2005. In addition, the Board and Department need to devote the necessary resources to complaint investigation and resolution to eliminate the backlog of cases outstanding for more than one year and continue providing us with complaint logs on a quarterly basis.

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

Previous finding: The Department's complaint tracking system should provide the means to monitor the status and location of each case. Department staff, however, did 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 2004 field review when Department 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.

Current status: Following New York's receipt of our August 2004 field review letter, the Department's legal counsel assigned Senior License Investigator Paul Matthews to identify and monitor the status and location of existing cases. Investigator Matthews established a process to ensure that all master copies of appraiser complaint files are maintained in the New York City office. Cases no longer would be archived, reducing the risk of misplacing files in the future.

Just before the follow-up review, we requested 13 complaints resolved in 2001, 2002, and 2003. Department staff located all 13 files. The files were well documented and their dispositions appeared equitable.

Department staff had agreed previously to use internal automated tracking systems more efficiently. Yet, in preparation for our follow-up visit, Investigator Matthews did not enter changes directly into the automated tracking systems, but entered those changes in writing on a paper report generated by the systems. It appeared that the staff still was not using the automated complaint tracking system. Both Mr. Matthews and Mr. Stavola stated that the appropriate data entry person will receive the case-related information in the future and will update the automated tracking system.

Action: The Department needs to use the existing automated complaint tracking system consistently and effectively or, if the existing system is not adequate, design and implement an effective tracking system.

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

Previous Finding: 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.

Current Status: Immediately following our 2004 field review, Department staff provided to the ASC all disciplinary action information from 1998 and afterward. Department staff established a procedure to refer all final disciplinary actions to the proper staff person, who then would include that information to the ASC in the State's monthly National Registry submission. We compared the actions recorded on the National Registry with those identified on the Department's enforcement log and found no discrepancies.

We appreciate the Department's efforts regarding this concern.

Action: None.

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

Previous Finding: 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 planned to resume the audit function in September 2004.

Current Status: New York resumed the audit process, as intended. The Department filled the vacant auditor position in August 2004. The auditor began reviewing 40 appraisers each month, beginning in September 2004. This number represents approximately 18% of renewing appraisers. At the time of our January 2005 follow-up review, the Department still was receiving and reviewing responses from the December 2004 audit. Of the 240 appraisers audited from September through November 2004, 17 appraisers failed to provide documentation supporting their affidavits. This figure represents an 8% failure rate, which is acceptable under ASC Policy Statement 10. New York fined each of the 17 appraisers \$1,000 and required that they obtain the needed continuing education within two months. One appraiser surrendered his credential, and two appraisers requested hearings. The hearings currently are being scheduled.

Action: The 8% failure rate is approaching the 10% threshold provided in ASC Policy Statement 10F. The Department and Board need to monitor this failure rate and, should it reach the 10% threshold, ensure compliance with ASC Policy Statement 10F's requirements. The Department and Board should publicize the disciplinary actions taken against appraisers failing the affidavit audits to encourage compliance with continuing education requirements.

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

Previous Finding: Our 2004 field review revealed that, since our 2001 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.

Current Status: New York maintains its temporary practice files in Albany. Because we limited our follow-up review to the New York City office, we did not review the temporary practice files. Department staff assured us that they understand the need to process temporary practice applications within the five-day time frame of ASC Policy Statement 5 and that they are doing so.

Action: None at this time. We will review the State's temporary practice files during field review planned for later this year.

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

Previous Finding: At the time of our 2004 field 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. Department 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 Department staff’s estimates, it appears that the cost would be less than \$1,000.

Current Status: New York’s appraiser regulations still do not reference the current 2005 edition of USPAP. On November 2, 2004, the Board entered into a long-term memorandum of understanding with the Appraisal Foundation that allows the Board to publish and distribute USPAP. The Foundation published the 2005 edition of USPAP in October 2004, but, because the Board meets quarterly, it did not direct the staff to order copies for distribution until December 2004.

In addition, at the time of our follow-up review, the Board had not taken the necessary regulatory steps to incorporate the 2005 USPAP into New York law. The Board planned on voting on a proposed regulatory change adopting the 2005 USPAP at its March 2005 meeting. Division of Licensing Director Joseph Amello stated that, once he receives Board approval, implementation of the final regulation should take about six months. Therefore, the regulation will not reference the 2005 USPAP until September or October 2005. This is nine to ten months after its effective date and a year after publication by the Appraisal Standards Board. Department staff believe that the Board may be able to incorporate future editions more quickly now that the memorandum of understanding is in place.

The State has failed to implement procedures to ensure that USPAP is adopted and implemented in a timely manner. Failure to adopt and implement USPAP in a timely manner could jeopardize New York’s ability to enforce current USPAP standards on its certified appraisers and, therefore, cause New York to fail in its Title XI responsibility to effectively supervise its appraisers.

Action: The Board and Department need to develop and implement procedures and timings that will allow timely adoption and implementation of USPAP in the future and provide a report to the ASC not later than June 30, 2005, detailing the procedures and timings that will be implemented.

Please respond to our findings and recommendations within 60 days from the date of this letter, unless otherwise noted above. Until the expiration of that time or the receipt of your response, we consider this follow-up 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 follow-up 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,

Ben Henson
Executive Director