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Appraisal Subcommittee

Federal Financial Institutions Examination Council

June 7, 2004

Ms. Anne Petit
Superintendent, Ohio Division of Real Estate
and Professional Licensing
77 South High Street, 20th floor
Columbus, Ohio 43266-0547

Dear Ms. Petit:

Thank you for your and your staff's assistance in the February 5-6, 2004 Appraisal Subcommittee ("ASC") review of Ohio's real estate appraiser regulatory program ("Program"), as well as the cooperation of the Ohio Real Estate Appraisers Board ("Board").

In summary, we find that Ohio's Program, at this time, is not in compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended ("Title XI"). Two areas of noncompliance are recurring items that we noted in previous field reviews. First, Ohio's temporary practice provisions have never complied with Title XI. We informed the Division of Real Estate and Professional Licensing ("Division") of our concerns in 1997, 1998, and 2001. Our second concern involves the complaint investigation and resolution process. Various aspects of the complaint/enforcement process have been the subject of concern for several years, as noted in our previous field reviews.

We cannot allow longstanding inconsistencies with Title XI to continue. Ohio must cure these concerns, in particular the temporary practice deficiencies, promptly. Otherwise, the ASC will consider initiating a non-recognition proceeding under § 1118 of Title XI, 12 U.S.C. 3347, and 12 C.F.R. part 1102, subpart B, thereunder. The remainder of this letter details our findings and recommendations for corrective action.

- **Ohio's temporary practice provisions do not comply with Title XI and ASC Policy Statement 5.**

Ohio continues to allow only one appraisal for each temporary practice permit. ASC Policy Statement 5 requires States to issue temporary practice permits on an assignment basis, where assignment is defined as one or more written real estate appraisal reports prepared under a single contract. During our review, we again found that the State was charging appraisers \$100 per appraisal to complete work under a single contract. If an appraiser is appraising multiple properties under a single assignment, Ohio's \$100 fee per property creates temporary practice fees that exceed \$150 per assignment. Fees above \$150 are defined as excessive in Policy Statement 5 and "excessive fees" are prohibited by Title XI. Therefore, the ASC finds that Ohio's temporary practice provisions do not comply with ASC Policy Statement 5 and Title XI.

We have informed Ohio about our temporary practice requirements on several occasions. Following adoption of Policy Statement 5 in 1997, the ASC notified all States about the new Policy Statement and the need for States to implement its provisions. In previous field review letters, we advised Ohio that its temporary practice provisions did not comply with Title XI and

ASC Policy Statement 5. After each ASC communication, Ohio responded in writing that forthcoming legislation would cure the violation. As of our February 2004 review, Ohio had yet to adopt curative legislation.

Ohio needs to resolve this longstanding conflict with Title XI promptly. Curative legislation needs to be introduced into the Ohio legislature, and all steps need to be taken to maximize its chances of becoming law as quickly as possible. We offer our assistance in reaching these goals.

- **There is a significant backlog in the complaint investigation and resolution process.**

During each field review of your Program, we have observed that complaint investigation and resolution responsiveness has worsened. During our 2001 field review, we noted that, of the 48 cases open at the time of the review, 14 had been in process longer than a year. Also, approximately 27% of closed cases had taken more than a year to resolve. During the current review, we noted that approximately 100 cases had been in process more than a year, and several were more than two years old. It appears likely that the number of outstanding complaints could continue to increase given the vacancy in the investigative section and the recent implementation of the Department's "consumer awareness campaign."

During discussions with ASC staff, you and Assistant Attorney Kristin Rosan offered to implement an expedited investigative process as a temporary means to address the backlog of cases. The proposed process would include limited or brief investigative reports and streamlined legal reviews. The Division would subpoena respondents to ensure their timely response to requests for documentation. Cases closed with no disciplinary action would go directly to the Superintendent for review. The Board and Division agreed to consider using advisory letters and settlement agreements to resolve cases involving minor, technical violations and cases in which respondents admitted violations. Provided that the "limited or brief investigative reports and streamlined legal reviews" do not adversely affect the quality of investigations, it appears your proposed procedures would help to reduce the backlog of cases.

Another aspect of the proposed expedited process would limit the investigation of complaints filed by review appraisers and third parties, such as Fannie Mae and HUD, to only the issues included in the complaint. Further, under the proposal, consumer complaints would receive more in-depth investigations and be handled on a priority basis. This approach would not comply with ASC Policy Statement 10, which requires State agencies to analyze each complaint to determine whether any additional violations, especially those related to USPAP, exist and should be added to the complaint. That Policy Statement also emphasizes that the State's enforcement program needs to focus on protecting Federal financial and public policy interests in real estate related financial transactions, *i.e.*, enforcing Title XI. It is the position of the ASC that all complaints need to be investigated and analyzed in the context of Title XI.

Please provide us with your timetable for implementing these new procedures within 60 days from the date of this letter. Also, please provide us with a copy of your complaint log on a quarterly basis to assist in our monitoring of your progress.

- **The online credential renewal process, as proposed, does not include an adequate verification process to ensure appraiser compliance with Title XI and Appraiser Qualifications Board criteria.**

The Department is transitioning to an online credential renewal process. The November 2003 Board meeting minutes indicated that, as part of this process, renewing appraisers would respond affirmatively or negatively to a question about the requisite hours of continuing education. We understand that the State had not developed an audit or other alternative method of verifying claimed continuing education. During the review, Ms. Petit and Ms. Rosan agreed that the Division should adopt a formal policy of randomly sampling continuing education claims.

In accordance with ASC Policy Statement 10, State agencies are expected to have a reliable means of validating both education and experience credit claimed for certification or licensing. The lack of routine verification procedures may lead to fraudulent claims that would threaten the integrity of the State's appraiser regulatory program. If the State decides to accept affidavits from renewing certified appraisers, it needs to establish a reliable audit or other process to ensure the integrity of the renewal process. The ASC has proposed substantial revisions to Policy Statement 10 regarding the use of affidavits. Ohio will need to comply with any future amendments to the statement. A copy of the proposal is attached to this letter.

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

Attachment

cc: Lawrence A. Kell, Chairman
Ohio Real Estate Appraisers Board
615 Superior Avenue, N.W.
Cleveland, Ohio 44113

Sylvia Keberle, Administrative Assistant
Ohio Division of Real Estate
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