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**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
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September 15, 2006

Virginia M. Gibbs, Chairman
Appraisal Subcommittee
Federal Financial Institutions Examination Council
2000 K Street, N.W., Suite 310
Washington, D.C. 20006

Dear Ms. Gibbs:

I am writing in response to your letter of July 19, 2006, which sets forth the Appraisal Subcommittee's ("ASC") report of its field review of Pennsylvania's appraiser regulatory program on June 7-8, 2006.

The ASC's report identified three areas of concern that the State Board of Certified Real Estate Appraisers ("Board") and the Bureau of Professional and Occupational Affairs ("Bureau") need to address as part of carrying out their duties and serving certificateholders and the public pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("Title XI"). The areas of concern are (1) lack of timeliness in the investigation and resolution of complaints; (2) inconsistencies between the regulations of the Board and the criteria of the Appraiser Qualifications Board ("AQB"); and (3) lack of timeliness in the remittance of National Registry fees to the ASC.

On behalf of the Board and the Bureau, I offer the following comments to address the concerns raised by the ASC.

I. Lack of Timely Investigation and Resolution of Complaints

The Board and Bureau strongly concur with the ASC's position that the timely investigation and resolution of complaints is essential to a State's meeting its obligation under Title XI to adequately supervise the appraisers that it regulates. ASC Policy Statement 10 provides that "[a]bsent special documented circumstances, final State agency administrative decisions regarding complaints should occur within one year of the complaint filing date." The ASC pointed out that a long-standing weakness of Pennsylvania's appraiser regulatory program

is the large number of appraiser complaints that are not investigated and resolved within the one-year time frame required by ASC Policy Statement 10. The ASC noted that the while changes implemented by the Bureau to reform the complaint investigation and resolution process have helped to reduce the percentage of complaints open for more than one year from 68% in April 2003 to 36% in June 2006 (even as the number of complaints has increased dramatically), the ratio of appraiser complaints open for more than one year remains unacceptably high.

The ASC requested that the Bureau and the Board provide it with a plan of action to reduce the backlog of open complaints and to ensure the timely processing of future complaints. The ASC said that, at a minimum, such plan needs to focus on two areas: (i) insufficient staffing of attorneys responsible for monitoring and prosecuting appraiser cases and negotiating settlements and (ii) ineffective procedures relating to the use of expert consultants to review appraisal reports of appraisers named in complaints.

With regard to the staffing issue, the ASC noted that at the time of its field review, there was only one attorney within the Bureau who had responsibility for prosecuting appraiser cases and that such attorney also had supervisory responsibility for the prosecution activities of other licensing boards, leaving him with insufficient time to handle appraiser cases on a timely basis. With regard to the use of expert consultants, the ASC stated that the Bureau's contract. ... with the expert consultants allow too much time - 120 days - for the consultant~ to submit their written reports. The ASC observed that other States that use expert consultants require written reports to be submitted within 60-to-90 days. The ASC noted that the problem is exacerbated by the Bureau's failure to enforce the 120-day submission requirement, with several expert consultants being allowed to take more than one year to submit their reports. The ASC also criticized the Bureau's practice of periodically sending its expert consultants a list of appraisal reports that the Bureau's legal staff had determined merited expert review and allowing the consultants to choose which appraisal reports they wanted to review; this practice has resulted in significant delays in processing complaints involving those appraisal reports that are not immediately chosen for review and remain unassigned. The ASC said a more effective procedure, currently in use in many other States, is to assign each appraisal report to an individual expert consultant based on the nature on the appraisal involved and the consultant's expertise.

The Board and the Bureau are committed to significantly reducing the number of appraiser complaints that remain open for more than one year and are taking the following steps to achieve that goal:

Assignment of additional trial prosecuting attorney for appraiser complaints involving standards-of-practice issues

As a result of a recent reorganization of its Prosecution Division, the Bureau has assigned a second trial prosecuting attorney to the Board. Although both of the Board's trial prosecuting attorneys will have certain prosecution responsibilities with regard to other licensing boards and commissions within the Bureau, a substantial portion of their time will be devoted to Board related prosecution activities. The Board's two trial prosecuting attorneys will focus their efforts on complaints involving allegations of violations of the Uniform Standards of Professional Appraisal Practice ("USPAP"), which comprise the majority of the current backlog of appraiser

complaints that have been open for more than one year. The two trial prosecuting attorneys will coordinate the use of expert consultants, file disciplinary charges, negotiate settlement agreements, and try all cases before the Board.

Utilization of "charging unit" prosecuting attorneys to process appraiser complaints not involving standards-of-practice issues

The Bureau's reorganization of the Prosecution Division has included the establishment of a four-attorney "charging unit" that will screen all non-medical complaints (which account for approximately 50% of the total number of complaints filed annually with the Bureau). The charging unit will determine which complaints can be immediately closed without further review or investigation, which complaints require further investigation and processing by trial prosecuting attorneys, and which complaints can be further investigated and processed by the charging unit itself or referred for Act 48 disposition. With regard to appraiser complaints, it is anticipated that the charging unit will seek to initiate charges and/or negotiate settlement agreements for complaints with straightforward proofs such as criminal convictions, reciprocal disciplinary actions, noncompliance with continuing education requirements, and unauthorized appraisal practice by non-certificateholders. The charging unit will refer complaints regarding standards-of-practice issues to the Board's trial prosecuting attorneys for evaluation by expert consultants.

More efficient utilization of expert consultants

The Bureau is committed to reforming the way it utilizes expert consultants. Expert consultant contracts will be revised to require consultants to submit written reports within 60 days of assignment. Each appraisal report requiring expert review will be assigned to an individual expert consultant based on the nature of the appraisal, the geographic location of the subject property, and the consultant's expertise; if the consultant declines the assignment, the appraisal report will be immediately reassigned to another expert consultant for review. Expert consultants who consistently fail to submit written reports within 60 days or who repeatedly decline assignments will have their contracts terminated. The Bureau will redouble its efforts to recruit qualified expert consultants from certain regions of Pennsylvania that are currently underserved by the expert consultant program. The Bureau will continue a recently instituted procedure of having one of its most highly qualified and efficient expert consultants perform a quick initial screening of all appraisal reports for the purpose of determining whether further expert review is required; this screening process has proved useful in helping the Prosecution Division weed out complaints where there are no apparent violations of USPAP or only de minimis violations.

¹ As described in the Board's response to the ASC's 2000 report, an Act 48 proceeding involves a summary citation procedure, similar to that used for traffic tickets, in which a licensee or certificateholder of a Bureau licensing board or commission is assessed a predetermined civil penalty - in accordance with a published schedule of civil penalties - for committing a minor statutory or regulatory violation. An Act 48 schedule of civil penalties for the Board was published in October 2004 and covers such matters as failing to properly sign an appraisal report, failing to report multiple certifications ⁰⁰ ¹¹ biennial renewal application, failing to timely report disciplinary action taken by another jurisdiction, and practicing for 11 limited period with an expired certification.

Increased use of settlement agreements as an alternative to formal hearings

The complaints that are least likely to be resolved within one year are those that result in formal hearings before the Board. Formal hearings are not only time-consuming, they also generate costs for the Bureau and the Board as well as for the respondent, who may incur considerable attorney and expert witness expenses. Since the beginning of this year, the Bureau's Prosecution Division has more aggressively sought to negotiate settlement agreements in appraiser cases prior to the initiation of formal charges; the newly created charging unit is expected to do the same with regard to the appraiser complaints that it processes. The settlement agreements are negotiated based on outcomes from prior settlement agreements and adjudicated cases with similar fact patterns. With regard to complaints involving USPAP violations, the settlement agreements include copies of the respondent's appraisal report and the report of the Bureau's expert consultant. These documents enable the Board to better assess the appropriateness of the proposed disciplinary sanction as well as the relative strength of the Prosecution Division's case in the event the settlement agreement were to be disapproved and the matter scheduled for a formal hearing.

When the Board schedules a case for a formal hearing, and a settlement agreement has not previously been submitted for the Board's review, the Board's scheduling order will provide that the formal hearing will not be continued for settlement purposes unless a settlement agreement signed by both parties accompanies the request for a continuance. This procedure will help avoid unnecessary delays in the hearing process while expediting the prospects of the case being resolved through a negotiated settlement.

* * *

Noting the increased incidence of mortgage fraud in Pennsylvania during the past several years, the ASC requested that the Bureau and the Board carefully scrutinize all appraiser complaints to determine whether possible mortgage fraud is involved and to prioritize the processing of complaints where such fraud is indicated.

The Bureau and the Board consider fraud to be the most serious violation that an appraiser can commit and the one that merits the severest of disciplinary sanctions. The Bureau and the Board have long given priority to complaints involving fraud and will continue to do so. The Bureau's Prosecution Division works with the enforcement departments of other state agencies to coordinate the investigation and prosecution of persons involved in the commission of mortgage fraud in Pennsylvania.

The Bureau's Prosecution Division will continue to provide the ASC with a log of appraiser complaints on a quarterly basis.

II. Regulatory Inconsistency with AQB Criteria

The ASC noted its long-standing concern that the Board's regulations are inconsistent with AQB criteria in that they (i) do not set forth AQB requirements relating to the acceptability

of distance education courses and (ii) impermissibly allow the teaching of appraisal courses to serve as qualifying work experience for appraiser certification.

As the ASC further noted, the Board is making progress towards revising its regulations for consistency with AQB criteria. On May 27, 2006, the Board published for public comment a notice of proposed rulemaking regarding a general updating of all its regulations. The Board solicited and received comments on its proposal from the ASC. The Board also received comments from interest groups and state regulatory review bodies. At its meeting on August 10, 2006, the Board reviewed the comments received during proposed rulemaking, made revisions to its proposal in response to the comments, and authorized the submission of final rulemaking for regulatory review. The Board anticipates that all required regulatory approvals of the final rulemaking will likely occur within the next six months. The Board's legal counsel will keep the ASC apprised of the progress of the formal rulemaking. The regulations, once finalized, will be consistent with AQB criteria, including the new education criteria that will take effect on January 1, 2008.

III. Lack of Timely Payment of National Registry Fees

The AQB expressed concern about the Bureau's failure to make timely payment of fees to the ASC's National Registry of appraisers who are eligible to perform appraisals in federally related transactions. The delays in remitting payments has caused delays in Pennsylvania appraisers being added to the National Registry, a circumstance that could have adverse consequences for the appraisers' businesses. The ASC urged the Bureau to devise expedited procedures that would allow National Registry fees to be paid within 45 days of the invoice date.

The delay in the Bureau's payment of the National Registry fees has stemmed in part from the need to have invoices reviewed and approved by the Department of State's Bureau of Finance and Operations (BFO), the state Comptroller's Office and the state Treasury Department. Routine processing of invoices frequently exceeded 45 days. Another factor contributing to the delay in payment of the fees has been the Board's request for adjustment to invoices after updated information has been provided to the ASC.

The Bureau has discussed the problem with all affected parties and expedited review procedures have been worked out. The Board will no longer hold up the processing of invoices pending requests for adjustment; the invoices will be paid and requests for adjustment will be made *as credits* on future invoices. The Bureau will submit invoices to the BFO within 48 hours of their receipt in the Board office. The BFO and the Comptroller's Office will give invoices prioritized review and transmit them to the Treasury Department. The Treasury Department will make every effort to issue checks for payment of invoices no later than 30 days after their receipt in the Board office. The BFO also will utilize an electronic tracking system to monitor the processing of invoices.

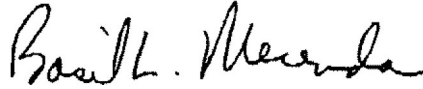
I am confident that these new procedures will eliminate the problem of untimely payment of National Registry fees to the ASC.

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Thank you for allowing me to respond to the ASC's concerns on behalf of the Bureau and the Board. Please do not hesitate to contact me if the ASC should require additional information.

Sincerely,



Basil L. Merenda
Commissioner / Acting Deputy Secretary
of the Commonwealth for Regulatory Programs

BLM:SW

cc: The Honorable Pedro A. Cortes
Secretary of the Commonwealth

Robert F. McRae, Chairman
State Board of Certified Real Estate Appraisers

Albert H. Masland, Chief Counsel
Department of State

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