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Appraisal Subcommittee
Federal Financial Institutions Examination Council

December 26, 2007

Larry D. Kokel, Chairman
Texas Appraiser Licensing and Certification Board
P.O. Box 12188
Austin, Texas 78711-2188

Dear Mr. Kokel:

Thank you for your cooperation and your staff's assistance in the October 3-5, 2007 Appraisal Subcommittee ("ASC") review of Texas' real estate appraiser regulatory program ("Program"). As discussed below, the Texas Appraiser Licensing and Certification Board ("Board") needs to address four concerns to bring its Program into compliance with Title XI of the Financial Institutions, Reform, Recovery, and Enforcement Act of 1989, as amended ("Title XI"). The four concerns are the State's slow complaint investigation and resolution process; the excessive temporary practice fee; the deferral of continuing education for servicemen returning from active duty; and the State's failure to review the work product of certified appraiser applicants.

Since 2003, Texas' complaint investigation and resolution program has failed to comply with Title XI. As discussed in more detail below, Texas has made some strides towards resolving this longstanding concern. Nevertheless, work remains to resolve the situation. Because of the longstanding nature of this deficiency, Texas will remain on a 12-month review cycle. If the State's current efforts fail to remedy the situation, the ASC may consider initiating a non-recognition proceeding.

- **Texas complaint investigation and resolution process did not comply with Title XI and ASC Policy Statement 10 E. because complaints were not investigated and resolved in a timely manner.**

ASC Policy Statement 10 E. provides that State appraiser regulatory agencies need to process complaints on a timely basis and that, absent special circumstances, final State administrative decisions regarding complaints should occur within one year of the complaint filing date.

We cited Texas for this deficiency in our 2002 field review letter; 2004 follow-up review letter; 2005 field review letter; and 2006 follow-up field review letter. The November 1, 2006 follow-up field review letter described in some detail your attempts to cure this deficiency over the years.

Following is a summary of complaint information from the October 2007 field review.

Field Review	Complaints received since previous review	Complaints outstanding	Complaints outstanding more than 1 year
November 2002	252 (84/yr)	89	15 (17%)
October 2005	302 (101/yr)	114	53 (37%)
October 2006*	212 (212/yr)	206	69 (34%)
October 2007	198 (198/yr)	258	92 (37.5%)

*Follow-up review

Since our October/November 2005 field review, the average number of complaints received per year has almost doubled from 101 per year to 198 per year. The number of outstanding complaints increased from 114 to 258, and the number of complaints outstanding for more than one year increased from 53 (37%) to 92 (37.5%). Of the 92 complaint outstanding more than one year, 66 were one to two years old; 21 were two to three years old; four were three to four years old; and one was more than four years old. It is important to note that the percentage of complaints outstanding more than one year only slightly increased despite the sharp increase in the number of complaints received.

Over the years, several changes in the Program both helped and hindered its progress towards remedying this situation. For example, complaint cases were reassigned to investigators using a geographic system, and each investigator was assigned complaints within a particular area that the investigator was most familiar; a full-time attorney dedicated to the Program and an additional investigator were hired; and the Board was authorized to informally settle disciplinary cases.

One change, however, was reversed by the State legislature. In 2005, the State's statute was amended to expedite the appraiser-related complaint resolution process by transferring hearing authority from the State Office of Administrative Hearings to an in-house administrative law judge. Complaints relating to all other professions remained within the State Office of Administrative Hearings' jurisdiction. To reestablish the uniformity of the State's hearing procedures, the legislature reinstated that Office's hearing authority over appraiser-related complaints.

The Program has been extensively reorganized several times since the 2002 field review. In fact, during the current field review, we learned that Program was in the initial stage of yet another reorganization, which was statutorily mandated and effective on September 1, 2007. The Board's staff was merged into the Real Estate Commission, and the real estate commissioner was authorized to manage the Board's staff.

While the Board staff now is within the Real Estate Commission staff, the investigators and legal staff that worked solely on Board matters remain fully dedicated to those functions. In addition, the Board retained its authority to make all final administrative decisions.

After our December 2006 follow-up review, the Board implemented a change in the complaint investigation process by establishing four different peer review committees to analyze complaints, with each committee chaired by a Board member who also is an appraiser. In

addition, two appraisers participating on these committees are AQB- certified USPAP instructors. In May 2007, the Board held a workshop for these peer review committee members.

During the October 2007 Board meeting, the peer review committees reported that, since mid-summer 2007, they had completed and returned to Board staff approximately 58 cases for resolution. The Board believed that, while this new process appeared to be working well, more time was needed to fully measure its efficacy.

We are encouraged by the State's actions to remedy our longstanding concern regarding the State's slow complaint investigation and resolution process. We agree with the Board that more time is needed to see whether the new processing changes, together with all the previous changes, will fully address our concerns. We hope to see a significant improvement in the timeliness of the complaint investigation and resolution program when we perform our next field review in 2008.

To address our concerns, the Board needs to:

1. Provide quarterly complaint logs to the ASC staff to allow us to monitor the Board's progress towards alleviating this longstanding deficiency. Please send those logs to denise@asc.gov;
 2. Eliminate the backlog of aged complaints; and
 3. Continue its efforts to ensure that all newly received complaints of appraiser misconduct are investigated and resolved in a timely manner;
- **The State's temporary practice fee was excessive and did not comply with ASC Policy Statement 5.**

The Board processed temporary practice applications in a timely manner, but charged a fee that exceeded the maximum established in ASC Policy Statement 5. Title XI provides that a State shall not impose excessive fees, as determined by the ASC. ASC Policy Statement 5 currently provides that temporary practice fees exceeding \$150 per assignment are excessive. Since our previous field review, the State amended its regulations to increase its temporary practice fee from \$150 to \$180.

Because the maximum allowable fee amount has not changed since 1997, the ASC plans to review that amount to determine whether it should be increased. Until that time, however, the Board needs to stop charging the \$180 temporary practice fee and to amend its regulations as soon as possible to reduce its temporary practice fee to \$150 or less, as required by Title XI and ASC Policy Statement 5.

- **Texas regulations allowed for 180-day deferral of continuing education for servicemen returning from active duty, which is inconsistent with AQB criteria.**

We cited the State for this deficiency in our December 23, 2005 field review and November 1, 2006 follow-up field review letters. AQB criteria state that State appraiser regulatory agencies may allow certified appraisers returning from active military duty to be placed on active status for a period of up to 90 days, pending completion of all continuing education requirements. During the November 18th Board meeting, the Board voted to draft

language to amend its regulations to allow certified appraisers returning from active duty a deferral of the continuing education for up to 90 days. The Board and its staff confirmed that they had never granted any deferrals under this provision.

Please keep us informed about the status of the regulatory change and promptly provide us with a copy of the adopted regulation.

- **Texas did not review appraisal work product for each applicant for certification in violation of ASC Policy Statements 10 F. and G.**

Currently, Texas' statute provides that the Board must accept affidavits for experience claims, and that the Board may audit no more than five percent of appraiser applicants. Texas has an automated system that designates every 20th application for audit. The audited applicant is directed to provide an experience log documenting the appropriate number of experience hours and months of practice. Staff then requests and reviews appraisal reports from each audited applicant. This process requires audited applicants to successfully complete the audit prior to receiving a certified credential.

During our October 2005 field review, ASC staff discussed with the Board the requirement to conform to Policy Statement 10 F. That paragraph prohibits States from accepting experience-related affidavits without documentation to support the claimed experience. Board agreed that it would change the current affidavit process to require all applicants to submit experience logs. The Board then would audit the experience logs in five percent of the applications for compliance with AQB criteria. In this manner, the State would avoid the need to change its statute, and the ASC would gain some assurance that applicants' experience claims were validated.¹ The Board began requiring experience logs for all applicants shortly after our field review.

The ASC added Policy Statement 10 G. on August 9, 2007, to clarify how States must validate experience documentation for AQB criteria conformance and USPAP compliance. That new paragraph, in part, states that for appraisal experience to be acceptable under Title XI and AQB criteria, that experience must be USPAP compliant. The only acceptable method for States to make this determination is by reviewing appraisal work product for each applicant. For most States, the most reasonable approach to making this determination would be to review specific work products and/or to require the applicant to perform appraisals of specified properties and prepare corresponding appraisal reports (*e.g.*, demonstration reports).

The application of ASC Policy Statements 10 F. and new paragraph G. was discussed in the ASC's August 13, 2007 letter transmitting paragraph G to the States. In that letter, the ASC responded to several comments from the States. Texas, which was unnamed in that letter, specifically noted that, "Our State law establishes 5% [of applicants] as an appropriate sampling technique. Our current concern is that your policy indicates that the ASC is considering 100% audit." The ASC responded by stating that, "ASC Policy Statement 10 F, effective January 1, 2005, prohibits a State from accepting experience affidavits for certified appraiser credentials.

¹ In our December 23, 2005 field review letter, we stated, "This process would result in an acceptable use of experience logs and would not be considered affidavits for Policy Statement 10 purposes. Further, this would be consistent with the Texas' statute that limits the percentage of applicants that the Board may audit to no more than five percent."

Therefore, the State must validate experience, including USPAP compliance, for each and every applicant using the methods described [below].^[2] Determining USPAP compliance for a sample of applicants is unacceptable.”

To remedy this situation, the Board needs to:

1. Begin as soon as possible the process for amending the nonconforming statutory provision and any implementing regulations to be consistent with Policy Statements 10 F. and G. and keep us informed about the status of the changes;
2. Take steps to ensure full compliance with ASC Policy Statements 10 F. and G. beginning February 1, 2008, regarding any applications for certification received on or after that date; and
3. Within 30 days from the date of this letter, provide the ASC with a written plan regarding how the State will comply with step two above.

Unless otherwise noted above, please respond to our findings and recommendations within 60 days following the receipt of this letter. 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.

Please contact us if you have further questions.

Sincerely,

Virginia M. Gibbs
Chairman

cc: Timothy Irvine, Board Administrator

² In that transmittal letter, the ASC noted that it would review each State’s method for determining USPAP compliance of experience claims on a case-by-case basis, and it would provide guidance regarding how the State should perform its due diligence when setting up an experience review process. The ASC stated that, at a minimum, a State should:

- Require an experience log containing adequate detail to enable the State to: (1) analyze compliance with the AQB criteria’s 24-month, 30-month, or other time frame regarding experience; (2) determine the total amount of experience claimed; (3) determine the types of experience claimed; (4) determine the reasonableness of the amount of experience claimed for each assignment; and (5) identify the property that was the subject of the assignment;
- Select two or more appraisal assignments from the log and requiring the applicant to submit the supporting work product (*e.g.*, appraisal reports) to the State;
- Review the submitted work products for USPAP compliance; and
- Maintain documentation to support the above steps.