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August 20, 2007

Ms. Virginia M. Gibbs, Chairman  
Appraisal Subcommittee  
2000 K Street NW, Suite 310

**AUG 29 2007**

Dear Ms. Gibbs:

This letter is in response to your findings and recommendations following the field review of the Hawaii Real Estate Appraiser Program, as set forth in your letter dated July 23, 2007. We requested and were granted an extension by Mr. Ben Henson of your staff to respond by August 21<sup>st</sup>.

**Hawaii's regulations do not conform to current Appraiser Qualifications Board ("AQB") criteria, and the State has not taken sufficient steps to implement the 2008 AQB criteria.**

It is our belief that adequate steps are being taken to try and implement the 2008 AQB criteria. In February and May 2006, Department staff sent drafts of the proposed amendments implementing the 2008 AQB Criteria to the Appraisal Subcommittee ("ASC") staff for review. Feedback from the ASC was important to ensure the proposed rules comport with federal requirements. Further, it was our understanding from the numerous years we have worked with ASC staff that review of draft rules before they are finalized for rule adoption, was necessary. It is also in everyone's best interest to move forward in our rule making process with the acceptance of the latest copy of proposed amendments by the ASC staff. Thus we were appreciative to subsequently have received comments and recommendations on our proposed rules during the ASC field review on June 5, 2007.

As you are aware, the State's rule making process is lengthy and can take a year or more to complete. If for some reason the rule making process cannot be completed in a timely fashion despite our best efforts, it is our belief that §466K-3, Hawaii Revised Statutes, powers and duties of the director, would allow the Department to implement AQB criteria upon its effective date, even as the rule making process is underway. §466K-3 states in relevant part:

Ms. Virginia M. Gibbs, Chairman  
August 20, 2007  
Page 2

“In addition to any other powers and duties authorized by law, the director shall have the following powers and duties:

(2) To **adopt, amend**, or repeal rules as the director finds necessary to effectuate fully this chapter and 12 United States Code §3301 et seq. (Emphasis added)

(5) To act as the designated representative of this State to implement 12 United States Code §3301 et seq.”

Given the above, we believe the Director can adopt the AQB criteria to be effective January 1, 2008 and, to memorialize this adoption, enclosed is a letter signed by me on this subject matter. Please be advised that advice from the ASC staff in a very similar situation, provided guidance to preparing such a letter that would appear to meet with your approval. For your information, the prior similar situation involved a concern in 2005 that we had not adopted the most current Uniform Standards of Appraisal Practice (“USPAP”). We indicated this was part of our proposed rules package. As the current USPAP was in effect you indicated the Director needed to approve the current USPAP as soon as possible and a letter from the Director formally adopting the current USPAP was necessary. The AQB criteria appears to be as urgent to adopt and implement, which we intend to do.

This however, does not mitigate the need to have our proposed rules finalized and as requested in your letter, the following is our specific action plan:

1. As we have previously stated, we plan to simultaneously implement both the 2003 and 2008 criteria changes on January 1, 2008, pursuant to the Director’s adoption of said criteria in the attached letter, with subsequent completion of the rule adoption process.
2. Having received comments and recommendations from the ASC staff, the draft rules will be submitted to the Attorney General’s Office and the Legislative Reference Bureau for review and recommendation before the end of August 2007.
3. After this review, the rules will be submitted to the Small Business Regulatory Review Board and upon their approval, will be submitted to the Department of Budget and Finance, Department of Business, Economic Development and Tourism and the Office of the Governor for approval to proceed with a public hearing on the rules. Upon Governor’s approval, a public hearing will be held with no less than thirty days public notice as required by law.
4. As many of these rules changes are a result of federal mandates, we will do our utmost to expedite review and approval by all the aforementioned offices.

5. If no substantive changes are recommended by the public at the hearing, required post hearing approvals will be sought for the rules to be officially adopted.
6. As requested, Department staff will provide status reports but respectfully requests the reports be at the end of each quarter, versus monthly. Milestones are realized more on a quarterly basis, than monthly, during the rule making process.
7. Further, as requested, Department staff will submit to the ASC staff a copy of the draft rules that will be submitted to the Attorney General's Office and a replacement copy if there are any changes to the proposed rules following each step of the process.
8. Finally, you will be notified in writing when the rules are adopted.

**The Department reactivated inactive appraiser credentials in a manner inconsistent with AQB criteria.**

We dispute that our action was inconsistent with the AQB criteria given there is no date specific when interpretation #10 was retired and when replacement interpretation #11 was effective. The appraiser in question had her status changed during the first week of May 2006. At the time there was no knowledge of interpretation #11. Subsequently, the retirement of interpretation #10 and its replacement with interpretation #11 was issued effective "May 2006". We attempted to verify the date specific for this transaction from the ASC Office but received no response. To the best of our knowledge, the appraiser in question could well have qualified under interpretation #10 for however long it was still retired in May 2006.

However, we have since taken your direction to have the appraiser qualify based on interpretation #11 and reply as follows to the issues you raise in your July 23, 2007 letter:

1. Refrain from reactivating certified appraisers who fail to conform to the AQB reactivation interpretation.

It was not our intention, nor do we believe the appraiser failed to conform to the AQB reactivation requirements. Nevertheless we assert we have and will continue to conform to the AQB reactivation interpretation.

2. Within 30 days from the date of this letter, notify the identified certified residential appraiser that she must complete the necessary continuing education courses within 60 days of the date of the department's notification letter.

We have contacted the licensee in question and informed her of the number of additional continuing education hours she must complete to retain her Certified Residential Appraiser credential. Also, we have been in contact with the appraiser on a monthly basis to monitor her progress. She has assured us she will be in compliance before October 23<sup>rd</sup>.

3. Within 90 days from the date of this letter, initiate appropriate action against the appraiser, if she fails to document compliance with the AQB Interpretation and begin the process to downgrade the credential to a non-certified level.

Department staff will proceed with the downgrade process if the appraiser fails to comply by the ASC deadline date.

4. As an alternative to completing the necessary continuing education courses, permit the appraiser to submit a new application and qualify as a new applicant.

The appraiser was informed of the alternative solution; however she chose to complete the required continuing education.

5. Within 120 days from the date of this letter, provide the ASC with a written report confirming that steps 1 through 3 (or 4) have been completed.

We respectfully believe a response is warranted on step 3, as this is the only step not completed to date. Otherwise our responses confirm steps 1, 2 and 4 have been completed.

6. Amend its regulations as soon as possible to comply with the AQB reactivation interpretation and keep us informed about the status of those rule amendments.

We concur, and again provide a copy of HAR §16-114-64 from our draft rules which we believe complies with the AQB reactivation interpretation. Please advise us as soon as possible if you deem otherwise.

**Hawaii did not investigate and resolve complaints in a timely manner.**

Title XI and ASC Policy Statement 10E state that absent special documented circumstances, final State administrative decisions regarding real estate appraiser complaints should occur within one year of the complaint filing date.

In light of the Policy Statement, RICO staff met to discuss procedural changes that could be adopted for real estate appraiser ("REA") cases that would facilitate faster REA case processing and prosecution while not unduly affecting the case handling or investigations of other licensee types. These are the procedural changes and initiatives that have been adopted:

1. In order to cultivate expertise and familiarity with REA issues, REA complaints will be assigned to one intake investigator, one field investigator (in Honolulu), and one staff attorney. Neighbor island cases will continue to be handled by neighbor island field investigators. RICO staff will be alerted and reminded about the need to prioritize processing REA complaints so that the complaints can be assigned, investigated and prosecuted expeditiously.
2. Upon receipt of a complaint, the assigned REA intake investigator, field investigator and staff attorney will confer to assess the complaint allegations. Cases that do not set forth possible licensing violations or that do not warrant further investigation will be closed. The team will discuss an investigative plan for those cases that warrant further investigation and prosecution.
3. Because an integral part of the investigation involves an independent review by a volunteer advisory committee member ("ACM"), a special effort has been made to recruit appraisers to serve in this capacity, especially on the neighbor islands. We have recently appointed five new neighbor island ACMs.

We were pleased to receive feedback from the ASC reviewers that the case files were well-organized, and that the ACM evaluations, case outcomes and licensing sanctions were appropriate for the respective cases.

**Hawaii did not provide regular National Registry data submissions in accordance with ASC Policy Statement 8 E.**

Your field visit pointed out that such data submission was to be provided monthly. Our bi-monthly data submission has been accepted by the ASC Office since 2002. This is the first time we were aware it should otherwise be submitted monthly. We will submit the data every month.

Ms. Virginia M. Gibbs, Chairman  
August 20, 2007  
Page 6

Thank you for your attention to this matter. If you have any questions, please contact Alan Taniguchi at (808) 586-2701 or Jo Ann Uchida at (808) 586-2666.

Very truly yours,

LAWRENCE M. REIFURTH  
Director

LMR:tat

Enclosure

cc: Alan Taniguchi, Executive Officer  
Jo Ann Uchida, Regulated Industries Complaints Office