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Appraisal Subcommittee

Federal Financial Institutions Examination Council

May 5, 2006

Mr. Robert K. Rickman, MAI
5020 Campus Drive
Newport Beach, CA 92660

Dear Mr. Rickman:

This letter responds to your letter dated March 14, 2006, which we received via fax on or about April 17, 2006. In your letter, you stated that you reviewed ASC Policy Statement 5, which relates to temporary practice. In light of that Policy Statement, you noted that, “it is not clear . . . how states are allowed to deny or delay a Temporary Practice Permit (TPR) request submitted by a licensed or certified appraiser.” You then asked us to “provide the legal authority that allows states to deny or delay a TPR request” and, if such authority exists, “what circumstances a state may delay or deny a TPR.”

It is important to note at the outset that when Congress adopted Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, (“Title XI”), Congress recognized the States’ existing operational and functional expertise in licensing, certifying, and supervising persons in various professions and chose to authorize the States, and not the Federal Government, to apply that expertise to real estate appraisers. Under Title XI, States, at a minimum, generally have to ensure that applicants for certification conform to the Appraiser Qualifications Board’s (“AQB”) qualifications for certification and ensure that licensed and certified appraisers comply with the Uniform Standards of Professional Appraisal Practice (“USPAP”) as adopted by the Appraisal Standards Board (“ASB”).

The entire structure of Title XI is built upon the concept of a complementary partnership between the States, which certify, license, and oversee real estate appraisers, the Appraisal Foundation’s AQB and ASB, which set the *minimum* qualifications and standards for the appraisal profession, and the ASC, which oversees the States to ensure that they are following Title XI’s minimum requirements. The ASC also monitors the Title XI-related activities of the Appraisal Foundation and its Boards. Because Title XI’s requirements are minimums, States are free to adopt more stringent qualifications and standards so long as they do not conflict with Title XI’s provisions.

One Title XI requirement relates to temporary practice. Section 1122(a)(1) of Title XI requires State appraiser regulatory agencies (“State agencies”) to recognize on a temporary basis the certification or license of an appraiser issued by another State if: (1) the property to be appraised is part of a federally related transaction, (2) the appraiser’s business is of a temporary nature; and (3) the appraiser registers with the State agency in the State of temporary practice. Paragraph two of that section prohibits State agencies from imposing excessive fees or burdensome requirements for temporary practice and directs the ASC to define those excessive fees or burdensome requirements. The second paragraph of the section became effective in September 1995, when § 315 of the Riegle Community Development and Regulatory Improvement Act of 1994 was added to Title XI.

On September 12, 1995, the ASC initiated a full, formal rulemaking proceeding soliciting public comments on how the ASC should implement that new legislation by publishing a “concept” notice at 60 F.R. 47365. While providing some specific ideas for consideration, the ASC opened the door to comments on all aspects of temporary practice. The ASC received letters from 46 commenters. On October 15, 1996, the ASC proposed ASC Policy Statement 5 for public comment. That notice was published at 61 F.R. 54645 on October 21, 1996. The ASC received 24 comment letters. The ASC subsequently adopted ASC Policy Statement 5 in its current form on April 16, 1997. The Policy Statement was published at 62 F.R. 19755 on April 23, 1997.

ASC Policy Statement 5 specifically identifies several “fees, acts and practices . . . to be ‘excessive fees’ or ‘burdensome practices.’” As such, State agencies are prohibited from collecting those fees or engaging in those practices. The ASC actively monitors State agency compliance with ASC Policy Statement 5 through its State agency oversight program. Please refer to our *2005 Annual Report to Congress* for general information about that, and other, ASC programs and activities. You may find the annual report (and the *Federal Register* publications discussed above) on our Web site at <http://www.asc.gov>.

While States are prohibited from engaging in these proscribed fees or practices, States otherwise are free to place reasonable restrictions or requirements on the issuance of temporary practice permits. For example, all States require appraisers seeking temporary practice to appoint an in-State entity for service of process purposes. And, States request applicants to disclose their criminal and disciplinary histories. These restrictions serve to protect legitimate, longstanding, State interests. The former ensures that the State will have jurisdiction over the activities of a temporary practitioner, even if he or she no longer is physically present in the State, and the latter helps to protect the State’s citizens against persons who previously have committed crimes or engaged in culpable wrongdoing. Therefore, while States must provide temporary practice under Title XI, each appraiser’s right to obtain a temporary practice permit under that Title is not absolute.

This conclusion is further supported by the fact that a temporary practice permit is but one kind of credential issued by the State. States traditionally have been free to place reasonable restrictions on the issuance of professional credentials.

For example, many, if not all, States condition the issuance of their professional credentials on applicants being current in child support payments. States have a strong interest in protecting children within their borders. An individual who may fully qualify for licensure or certification as a real estate appraiser by meeting the appropriate AQB qualifications criteria still could be denied his or her credential because of support payment delinquencies.

Likewise, States uniformly have required applicants for professional credentials to provide their criminal histories during the qualification process. That information helps to ensure that States make well-informed, reasonable decisions when issuing professional credentials. We understand that criminal history information disclosed in this process is not used by the States, without exception, to disqualify applicants from obtaining credentials. States weight this information together with the applicant’s other qualifications when making credentialing determinations. How much weight a State might assign to past criminal activity depends on

numerous factors, including how long ago the conviction occurred, whether fraud or dishonesty was involved in the offense, whether the applicant committed a misdemeanor or a felony, and whether the crime involved physical harm to persons or property.

In sum, Title XI's right to obtain a temporary practice permit is not absolute. States may condition, delay, or deny issuance of a temporary practice permit so long as the reasons underlying those actions are reasonable, forward legitimate State interests, and do not qualify as burdensome practices as defined by the ASC under Title XI.

Please contact us if you have further questions.

Sincerely,

Ben Henson
Executive Director