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Appraisal Subcommittee

Federal Financial Institutions Examination Council

August 14, 1998

Barbara Wolff, Chairperson
Indiana Real Estate Appraiser Licensure
and Certification Board
302 W. Washington, Room EO34
Indianapolis, IN 46204

Dear Ms. Wolff:

Thank you for your cooperation and your staff's assistance in the July 9-10, 1998 Appraisal Subcommittee ("ASC") review of the Indiana Real Estate Appraiser Licensure and Certification Board ("Board") and appraiser regulatory program ("Program").

As a result of our field review, we believe that many aspects of your Program are effective. Your enforcement program is highly efficient. Complaint files are well documented and cases are resolved swiftly. We are pleased that Indiana readily accepts continuing education courses approved by other jurisdictions. We also appreciate Indiana's ability to discipline an Indiana appraiser based on disciplinary actions taken against the appraiser by another State.

We, however, identified the following areas that need attention.

- **Indiana had not submitted information to the ASC regarding disciplinary actions taken by the Board.**

It is critical for States to report expeditiously to the ASC any disciplinary action taken against a certified or licensed appraiser. The need to submit disciplinary action information and directions on how to submit such data were discussed in our July 31, September 26, and September 30, 1997 letters to all States and in ASC Policy Statement 9. At the time of the review, we had not received any disciplinary action information from Indiana.

Since the review, ASC staff received a telephone call from Indiana investigator John Kersey to discuss this requirement and received a listing of disciplinary actions taken by the Board during the past several years. We appreciate your prompt action regarding this issue. We trust that the Board will establish and follow procedures for submitting updated disciplinary action information to us each month.

- **A complaint filed against a Board member may not have been resolved in a manner consistent with similar complaints.**

Most of the approximately 100 complaints of appraiser misconduct filed with the Attorney General were resolved equitably within six months. As mentioned earlier, you have an efficient complaint investigation and resolution program. We have some concerns, however, about a complaint filed against a Board member in 1997. Our review of the appraisal report and the review prepared by the Board liaison revealed a number of unaddressed USPAP inconsistencies and violations. Given the Board's strict sanctions in other cases, it appears that the Board

member may have been given preferential treatment. Given the Board members' roles in the State's appraiser regulatory efforts, it is important that the Board seek to avoid even the appearance of preferential treatment for Board members.

Accordingly, the Board must revise the complaint investigation and resolution process for complaints against Board members. When a complaint against a Board member is received by the Attorney General's Office, the complaint must be immediately referred to the full Board for review to determine whether the complaint should be pursued. The decision to pursue or not pursue a complaint against a Board member should be based on the majority vote of the Board. We believe that this change should go a long way towards eliminating the potential for preferential treatment, actual or perceived. Once the complaint resolution process is revised, complaint number 97D194 must be reopened and processed in accordance with the revised procedures. Please notify us of the results of this reopened investigation.

- **Board regulations do not reference the most current version of USPAP, nor are they routinely amended to incorporate USPAP changes.**

Indiana Annotated Code 3-6-2 recognizes the 1997 edition of USPAP. This section also specifically states that no subsequent editions, amendments, supplements, or releases of USPAP may be in effect unless the Real Estate Commission adopts them. The Attorney General's office has determined that incorporating USPAP by generic reference violates the Indiana Constitution as an unlawful delegation of rulemaking authority.

The Board and Real Estate Commission have the authority to update Board regulations to incorporate USPAP revisions. We note, however, that the Board does not routinely amend its rules to incorporate USPAP changes. We recognize that the difference between the 1997 USPAP, currently referenced in the rules, and the 1998 USPAP was the addition of an Advisory Opinion. We also understand that the Board's decision not to adopt the 1998 USPAP was, in part, because Advisory Opinions are not legally enforceable. We note, however, that the Board opted not to adopt USPAP twice before, in 1994 and 1996. Most notably, the 1994 USPAP edition contained provisions that completely changed the reporting requirements for all appraisals. This revision was not incorporated into Board rules until April 1995. Further complicating this situation is that, for enforcement purposes, the legal staff must use the USPAP version adopted in the regulations at the time of an offense. In years of very significant changes like 1994 (and potentially 1999), failure to adopt the most recent USPAP version very likely could adversely affect the Board's ability to enforce required appraisal standards and take desired disciplinary actions.

Title XI does not give the States the discretion to determine which USPAP version to reference. The Board, therefore, must take the necessary action to update its regulations early enough **each year** to avoid referencing outdated USPAP versions.

- **Indiana does not have any reciprocal agreements.**

To date, the Board has rejected or tabled reciprocal requests from other States for not being substantially equivalent with Indiana's statute or regulations. The only significant difference in Indiana regulations, when compared to the minimum Appraiser Qualifications Board ("AQB") criteria adopted by most States, is the 135-hour education requirement for the certified residential

classification. As discussed in ASC Policy Statement 6, we recommend that States enter into reciprocal agreements with other States, provided the other State meets the AQB minimum criteria. We encourage Indiana to establish reciprocal agreements with other States, specifically with adjacent States, and not to allow Indiana's 135-hour certified residential requirement to hinder such agreements.

- **Indiana regulations do not recognize USPAP Standards 6-10.**

We understand that the Attorney General's office advised that the Board is statutorily prohibited from incorporating "non-real property" related USPAP Standards 6-10. We encourage States to adopt USPAP in its entirety, because real property assignments also may entail evaluating personal property or business valuation. You may wish to consider, at a minimum, incorporating USPAP Standard 6, Mass Appraisal and Reporting, into your rules. Mass appraisals are performed on real property and should be within the purview of the Board. Incorporating Standards 7-10 might improve your enforcement abilities for appraisals that cover both real, personal, and business properties.

- **The Real Estate Commission must approve Board regulations.**

It is our understanding that, in accordance with Indiana statute, the Board has the authority to draft regulations, but may not promulgate regulations. Therefore, the first step in the Board's rulemaking process is to receive the Real Estate Commission's approval. The Real Estate Commission may approve or deny the Board's proposed rules and it may offer recommendations on how provisions may be revised. The authority to issue and amend its regulations should be retained by the Board at all times. There is the possibility that the Real Estate Commission may exert undue pressure on the Board to incorporate provisions into the appraisal regulations conflicting with the spirit of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act ("Title XI").

We caution the Board to ensure that decisions concerning appraiser regulations are made independently from those made by the Real Estate Commission. The Board should notify the ASC if, at any time, it believes the Real Estate Commission is unduly influencing its decisions.

- **It appears that the Program does not receive adequate funding for training and educational purposes.**

Indiana is a member of the Association of Appraiser Regulatory Officials ("AARO"), but due to budgetary constraints, staff and Board members are unable to attend national and regional meetings sponsored by the ASC, AARO, and appraisal organizations without personally paying for these events. As a result, Indiana has not been represented at many of these meetings.

We believe that the training and the exchange of ideas and solutions that occur at these meetings are very beneficial to State appraiser regulatory officials. We, therefore, urge the Board to seek adequate funding to permit Indiana's presence and participation in the training, educational opportunities of AARO and other industry meetings.

- **Temporary practice applications do not identify the property to be appraised.**

We noted that your temporary practice applications do not identify the property to be appraised. Failure to identify the property being appraised may make enforcement against a temporary permit holder difficult. The Board could have problems relating a particular appraisal to a specific permit. You may wish to consider requiring out-of-State appraisers to identify the properties being appraised under temporary practice permits.

Please respond to our findings and recommendations within 60 days from the date 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.

If you have any questions, please contact us.

Sincerely,

Herbert S. Yolles
Chairperson

cc: Julie Wiesinger, Board Secretary