

Appraisal Subcommittee

Federal Financial Institutions Examination Council

May 23, 1997

E. Roger Everett, Chairperson
Michigan Board of Real Estate Appraisers
Bureau of Occupational and Professional
Regulation
Department of Industry and Commercial Services
P.O. Box 30018
Lansing, MI 48909

Dear Mr. Everett:

On February 12-13, 1997, the second field review of the Michigan Board of Real Estate Appraisers ("Board") was conducted in the offices of the Bureau of Occupational and Professional Licensing, Michigan Department of Consumer and Industry Services. Our review was scheduled in advance to allow Appraisal Subcommittee ("ASC") staff to meet with and observe the Board at its scheduled February 13, 1997 meeting. Unfortunately, this meeting did not occur. Our staff, already on site for the review, was informed on February 12 that the Board meeting was canceled due to the lack of a quorum.

Before we can determine whether the Board is substantially in compliance with Title X your response to this letter and our agreement with your proposed resolution to the following issues are necessary:

- **Scheduled Board meetings are frequently canceled due to the lack of a quorum.**

A pattern has emerged during the past few years where the Board meets very infrequently, despite scheduled meetings with agendas. Sometimes a meeting is canceled due to lack of any action items. However, several meetings, including the February 13, 1997 meeting which the ASC staff was scheduled to attend, were canceled due to the lack of a quorum. Failure to conduct scheduled meetings delays Board action on petition reviews, consideration of stipulations from informal enforcement hearings and other actions. Given the infrequent nature of the Board's scheduled meetings (three times a year), cancellation of a scheduled meeting can create a six month, or longer, delay in Board actions.

Our review of Board minutes disclosed poor attendance records of several Board members. Of eight Board meetings conducted in 1994 through 1996, one Board member failed to attend any meetings. (His term expired and he was replaced by a new Board member in 1996.) One Board member attended only three of eight meetings, and three members attended only five of eight meetings. As a result, several meetings barely were able to achieve Michigan's quorum of five out of nine Board members.

Board members should commit to attend Board meetings. If Board members cannot commit to attend scheduled meetings, the Board should delegate additional authority to the Board

Administrator to ensure that accomplishment of the Board's mission is not frustrated due to its failure to meet.

- **Temporary Practice is not provided for under Michigan's law or Board rule.**

Michigan does not provide temporary practice to State certified or licensed appraisers from other States. Instead, it requires appraisers seeking temporary practice to obtain a permanent reciprocal license or certification. Appraisers must pay \$200 for the license or certificate. Michigan processes reciprocal credential applications swiftly, usually within one or two days of receipt and does not impose any burdensome procedural requirements on applicants.

Section 1122(a) of Title XI requires States to provide temporary practice and prohibits State appraiser regulatory agencies from imposing excessive fees or burdensome requirements as determined by the ASC. The ASC, in recently amended Policy Statement 5 regarding temporary practice, defined as burdensome a State's requiring temporary practitioners to obtain a permanent certification or license in the State of temporary practice. Because Michigan does not provide temporary practice and requires temporary practitioners to obtain a permanent, reciprocal certification or license, Michigan's practices appear inconsistent with a literal reading of Title XI and Policy Statement 5.

Nevertheless, we believe that Michigan's reciprocity program is, **in substance**, the State's temporary practice program, and we will treat it as such. Michigan's program complies with most aspects of Title XI's temporary practice provisions and Statement 5. Based on the facts in this instance, we have chosen not to enforce the "permanent certification or license provision discussed above. We intended this provision to cover instances where State certification/licensing applications or procedures are lengthy, expensive or otherwise unduly burdensome. Michigan's current program does not have such applications or procedures.

Policy Statement 5 also defines as excessive any temporary practice fee exceeding \$150. Michigan's \$200 fee, therefore, is inconsistent with Statement 5.

To attain compliance, we believe that Michigan has two options. First, you may simply reduce the \$200 fee to acceptable levels, and we will continue to monitor your reciprocity program as your temporary practice program, i.e., according to the higher standards required by Title XI. Your alternative is to establish a separate temporary practice program, with fees at acceptable levels and procedures and practices consistent with Policy Statement 5. In any event, you must reduce the \$200 fee to \$150 or less. Please advise us of your actions and the timetable that you propose to accomplish compliance.

- **No provision has been made to implement the Appraiser Qualifications Board's ("AQB") revised and more stringent education and experience requirements/standards.**

In 1994, the AQB notified all States that it was increasing its education and experience requirements for certification and education standards for licensing, effective January 1, 1998. At the time of our review, Neither State law nor Board rule had been changed to implement the new certification requirements. Please ensure that the necessary actions are initiated to implement the revised AQB certification qualification requirements effective January 1, 1998.

- **Michigan's appraiser regulatory statutes cite an obsolete version of the Uniform Standards of Professional Appraisal Practice ("USPAP").**

In Michigan's Appraiser regulatory statute, USPAP is defined as the version dated June 5, 1990. We understand that the Board believes that it is not authorized to incorporate, by reference, subsequent changes to USPAP. The Board's belief appears to be based on Michigan's strict general statute regarding incorporation by reference, which requires full identification of the reference by date, or otherwise, and specifically prohibits the reference from covering later amendments or editions of the adopted matter. However, section 339.2605(2) of Michigan's appraiser regulatory statute authorizes the Board to "supplement or adopt by reference any amendments to the uniform standards of professional appraisal practice through the promulgation of rules...." Read together, the statutes appear to authorize the Board to adopt subsequent versions of USPAP by specific reference through rule making. If your legal counsel does not agree with our interpretation, please contact Marc Weinberg, the ASC's General Counsel. In any event, the Board must initiate the necessary actions to ensure that the most recent version of USPAP is adopted in a timely manner each year.

- **Enforcement Division personnel and investigators appear to lack sufficient training in USPAP and basic appraisal methodology.**

Enforcement Division investigators have closed cases without sanctions of any type, while at the same time acknowledging the existence of USPAP violations. These investigators have closed cases with little more than a warning letter, despite technical reviews by a Board member citing significant USPAP violations. Moreover, cases were closed on the basis of the offending appraiser's agreement to make the complaining consumer whole. Underlying violations were not cited and appraiser educational deficiencies were not addressed. These actions indicate that Enforcement Division personnel and investigators do not have a sufficient understanding of USPAP and its role in the regulatory enforcement process and do not carefully consider the expert findings of the Board member assigned to the case during the enforcement process.

Enforcement Division personnel and investigators need to receive periodic education in USPAP and the appraisal process to better enable them to recognize USPAP violations. Technical findings of Board members assigned to assist Enforcement Division investigators must be considered in determining appropriate complaint disposition.

Please respond to these issues within the next 60 days.

Sincerely,

Herbert S. Yolles
Chairman

cc: Judy Dennis
Licensing Administrator