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September 9, 1997

Herbert S. Yolles, Chairman  
Appraisal Subcommittee  
2100 Pennsylvania Avenue, NW, Suite 200  
Washington, DC 20037

Dear Mr. Yolles:

This is to acknowledge your letter of May 23, 1997, on behalf of the Appraisal Subcommittee (ASC), to Board Chairperson, Mr. E. Roger Everett, regarding the field review conducted of the Board of Real Estate Appraisers on February 12-13, 1997. As Licensing Administrator for the Board, I am responding to your comments. I apologize for the delay of this response. The following five issues were addressed as a result of the field review:

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

**ISSUE:** A review of the Board meeting minutes indicates that during the past few years a pattern has emerged where the Board meets very infrequently, despite scheduled meetings with agendas, and, that failure to conduct scheduled meetings delays Board action on agenda items. Further, a review of the Board minutes disclosed poor attendance records of several Board members.

**ASC RECOMMENDATIONS:** 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.

**DEPARTMENT RESPONSE:** By authority of the Michigan Occupational Code, PA 299 of 1980, as amended, M.C.L. 339.306 states that the Board shall meet as often as necessary to fulfill its duties, but the Board shall not meet less than two times a year and at other times set by the Director. M.C.L. 339.302, of the Code establishes that Board members are appointed by the Governor with the advice and consent of the Senate for a term of four years unless otherwise appointed, and the Governor has the authority to appoint or remove a member of a board, commission, or committee in accordance with the State Constitution. The Governor's office has been in contact with the Department regarding Board members' eligibility for reappointment and their attendance records.

In an effort to ensure that scheduled Board meetings are held, both Department staff and Board members have reevaluated the number of times a year the Board should meet to effectively conduct Board business and still remain in compliance with statutory requirements. Due to the decline in the issues which actually require formal Board action at a board meeting pursuant to the Open Meetings Act, three annual Board meetings are currently being scheduled with the understanding that others may be added or the third one may be canceled, as needed. The Chairperson of the Board of Real Estate Appraisers has been asked to contact Board members

with poor attendance to remind them of their responsibilities as Board members. Due to a vacancy created by a person who has moved to another state and the fact that the member's term is also expired, another appointment by the Governor's office is anticipated within the near future. Hopefully, with a current nine member Board, and members being reminded of the importance of attending Board meetings, this problem will be corrected.

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

**ISSUE:** Michigan does not provide temporary practice to State Certified or State Licensed appraisers from other states. Instead, it requires appraisers seeking temporary practice to obtain a permanent reciprocal license and pay \$200.00 for the license. 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 Appraisal Subcommittee (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 license in the State of temporary practice, and Policy Statement 5 also defines as excessive, any temporary practice fee exceeding \$150.00.

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 S. Nevertheless, the ASC believes that Michigan's reciprocity program is, **in substance**, the State's temporary practice program, and will treat it as such as Michigan's program complies with most aspects of Title XI's temporary practice provisions and Statement 5. Based on the facts in this instance, ASC has chosen not to enforce the "permanent certification or license provision" as discussed above, as the provision is intended to cover instances where State certification applications or procedures are lengthy, expensive or otherwise unduly burdensome. Michigan processes reciprocal credential applications swiftly, usually within one or two days of receipt and does not impose any burdensome procedural requirements on applicants. Michigan is, however, inconsistent with amended Policy Statement 5 by exceeding the \$150.00 or less temporary practice fee.

**ASC RECOMMENDATIONS:** To obtain compliance Michigan has two options:

First option would simply be to reduce the \$200.00 fee to an acceptable level, and the reciprocity program will continue to be monitored as the temporary practice program. Second option is to establish a separate temporary program with fees at acceptable levels, and procedures and practices consistent with Policy Statement 5. In either case, Michigan must reduce the \$200.00 fee and advise the Appraisal Subcommittee of the State's actions and timetable proposed to accomplish compliance.

**DEPARTMENT RESPONSE:** The Department and board have drafted amendatory language to Michigan's Appraiser regulatory statute (Article 26 of the Occupational Code) which includes a Temporary Practice provision. The Department will also seek amendatory legislation to the State License Fee Act proposing that a Temporary License fee category be established to authorize the charging of a reduced temporary license/reciprocity fee not to exceed \$150.

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

**ISSUE:** In 1994, the Appraisal Qualifications Board (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 the field review, neither Michigan's State law, nor Board administrative rules had been changed to implement the new certification requirements.

**ASC RECOMMENDATIONS:** The Department is being asked to ensure that the necessary actions are

initiated to implement the revised AQB certification qualification requirements effective January 1, 1998.

**DEPARTMENT RESPONSE:** The Board has approved proposed amendments to Michigan's Appraiser regulatory statute (Article 26 of the Occupational Code). The proposed amendments address the requirements to be implemented by the AQB effective January 1, 1998, in addition to other law changes. The Board will be advised to seek a legislative sponsor to introduce the proposed legislation as quickly as possible.

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

**ISSUE;** In Michigan's Appraiser regulatory statute, USPAP is defined as the version dated June 5, 1990. The Board states that it is not authorized to incorporate, by reference, subsequent changes to USPAP 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. Section 339.2605(2) of the Michigan Occupational Code 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 the Department's legal counsel does not agree with the ASC's interpretation, the ASC's legal counsel should be contacted.

**ASC RECOMMENDATIONS:** The Board must initiate the necessary actions to ensure that the most recent version of the USPAP is adopted in a timely manner each year.

**DEPARTMENT RESPONSE:** Section 24.232 (4) of the Michigan Administrative Procedures Act of 1969, Act 306 of 1969, as amended. states "an agency may adopt, by reference in its rules and without publishing the adopted matter in full, all or any part of a code, standard or regulation which has been adopted by an agency of the United States or by a nationally recognized organization or association. The reference shall fully identify the adopted matter by date and otherwise. The reference shall not cover any later amendments and editions of the adopted matter, but if the agency wishes to incorporate them in its rule it shall amend the rule or promulgate a new rule therefor..."

The proposed amendatory legislation to Michigan's Appraiser regulatory statute has language to update the USPAP to a recent version. Since the USPAP are amended biannually, the probability of amending the statute to reference the latest version of the USPAP each time they are updated is highly unlikely. The Department will consider referencing the specific version of the USPAP in a rule instead, which would be easier to try to amend.

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

**ISSUE:** Enforcement Division investigators have closed cases without sanctions of any type, while 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.

**ASC RECOMMENDATIONS:** 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.

**DEPARTMENT RESPONSE:** The Enforcement Division personnel and investigators are responsible for 25 different professions within the Department. Training classes for the various professions are being considered as time and resources allow. When reviewing future complaints regarding possible violations of the statute, administrative rules, and USPAP, the Department will work more closely with the Board member assigned to the complaint with regard to professional violations . A Disciplinary Sanctions Task Force was established, consisting of department staff from the Licensing Division, the Enforcement Division and the Office of Legal Resources, with the legal review and advice of the Office of Attorney General. The purpose was to review the various statute violations resulting from formal complaints, and to prepare a document for assisting Department staff and Board members when negotiating settlements or assessing sanctions in disciplinary actions. The document is intended to serve as a guide to provide consistent sanctions for similar circumstances. Input and approval from Board members were given to this document with the understanding that it could be modified as needed. This tool will help to eliminate some of the problem areas addressed in the findings resulting from the field review.

Please contact this office if you have any questions regarding these responses.

Sincerely,

Judith A. Dennis  
Licensing Administrator

cc: Board of Real Estate Appraisers

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