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Appraisal Subcommittee
Federal Financial Institutions Examination Council

March 27, 2000

Scott Bouchert, Enforcement Manager
Susan Bergh, Licensing Director
Minnesota Department of Commerce
133 East 7th Street
St. Paul, MN 55101

Dear Mr. Bouchert and Ms. Bergh:

Thank you for your cooperation and your staff's assistance in the February 17-18, 2000 Appraisal Subcommittee ("ASC") review of the Minnesota appraiser regulatory program ("Program") housed within the Department of Commerce ("Department").

Our review revealed serious continuing weaknesses in Minnesota's Program. Many of these weaknesses were noted in our March 10, 1997 letter following our December 1996 on-site review. In response to our letter, we were told that the issues either were corrected or were misrepresentations of the Program needing no corrective action. During this field review, we found these assertions to be inaccurate. Minnesota has made virtually no improvement in its Program nor corrected the problem areas previously noted. The Department must take the necessary steps promptly to resolve the weaknesses identified below.

- **Temporary Practice**

Temporary practice is not administered in a manner that is consistent with ASC Policy Statement 5. Guidance that accompanies the temporary practice application requires appraisers to identify the address of the property noting that only one appraisal may be performed "per application and fee." We reviewed several files of individuals performing multiple appraisals for a single client, obviously under the same assignment. Each paid \$100 per property. One Kansas appraiser paid \$400 for a temporary practice permit to appraise four properties, even though the properties were part of a single assignment. Documentation in several files revealed that, when confronted with the prospect of having to pay \$200 or more to perform the assignment, some appraisers opted for permanent licensure or certification because it was less expensive. Policy Statement 5 specifies that permits should be awarded on an assignment basis where "assignment" is defined as one or more appraisals prepared under one contract. Moreover, charging a temporary practice fee exceeding \$150 per assignment has been deemed excessive by the ASC. Minnesota must take the necessary actions to ensure that temporary practice fees do not exceed \$150 per assignment, regardless of the number of properties appraised under the assignment.

We also note that temporary practice permits typically are issued within 10-14 days after the completed application is received. Taking more than five business days to issue a temporary practice permit is considered to be burdensome as defined in ASC Policy Statement 5. The Department must initiate the necessary amendments to its policies and practices to require Department staff to process complete temporary practice applications within five days of receipt. Further, we encourage the Department to consider using the License History Report

receipt. Further, we encourage the Department to consider using the License History Report feature on our Web site (www.asc.gov) to eliminate delays created awaiting letters of good standing from applicants.

- **Complaint Investigation and Resolution**

We continue to be concerned with your enforcement program. Though there were no unresolved complaints at the time of review, the complaint log and file documentation revealed that complaints referred for investigation usually took more than a year to resolve, and several took two to three years to complete. According to Department staff, appraisal cases are not given priority because the case volume is not as great as that for other professions, thus not warranting the immediate commitment of resources. The Department needs to initiate the necessary actions to implement a more rapid investigatory process to resolve future complaints expeditiously.

As stated in our March 1997 letter, Department investigators do not appear to have adequate appraisal expertise and education to review complaints and make recommendations regarding appropriate disposition. We continued to document instances in which violations of the Uniform Standards of Professional Appraisal Practice (“USPAP”) were not pursued. Especially because of numerous staffing changes, investigators still do not have adequate expertise and education in USPAP and other appraisal techniques to review and make enforcement decisions about appraiser misconduct. Yet, they continue to have the autonomy to open and close complaint cases without further peer review, professional appraiser review, or supervisory review. The Enforcement Manager gave us a list of appraisers selected to consult on complaint cases. We, however, did not find any evidence that these appraisers were used and were told by other staff that, if consultants were used, their assistance was limited to “land flip” cases.

To address this concern, the Department must ensure that the investigators for appraisal complaints are trained in basic appraisal principles, including USPAP, and remain abreast of USPAP changes. Alternatively, the Department could expand the use of selected appraisal reviewers to review all appraiser complaints received for compliance with USPAP.

- **National Registry of Real Estate Appraisers**

It is very important for Minnesota to report expeditiously to the ASC any disciplinary action taken against licensed or certified appraisers, in accordance with ASC Policy Statement 9. As a result of the review, we now know that unreported disciplinary actions, including 28 warning letters, at least one 30-day suspension, and 24 other sanctions identified on the log as “action taken,” were taken against Minnesota appraisers between 1997 and 1999. The only disciplinary action reflected on the Registry is a revocation effective December 14, 1998.

You must submit a comprehensive report regarding all prior disciplinary and warning actions taken by the Department. You also must ensure a mechanism is in place to report all disciplinary actions to us on at least a monthly basis. The National Registry’s value and usefulness are largely dependent on the quality and timeliness of State-collected data. Accurate and frequent data submissions from all States are necessary to maintain an up-to-date Registry.

Minnesota does not remit Registry fees to the ASC on a timely or regular basis. We received fifteen Registry data submissions between January 1998 and February 2000, and issued fifteen

invoices. Yet, Minnesota made only four payments, each after repeated telephone contacts by ASC staff. Our records consistently reflect large outstanding balances for Minnesota for periods often longer than seven months.

In accordance with ASC Policy Statement 8, you must review the Registry invoices for accuracy immediately upon receipt and pay all fees owed, or the undisputed portion, within 45 days from the invoice date. Failure to remit Registry fees promptly in the future may result in Minnesota appraisers being removed from the Registry and lenders being notified that the appraisers are not eligible to perform appraisals in connection with federally related transactions.

- **Education**

The Department has approved a number of continuing education classes that have no appraisal content. We were given a list that contained approximately 1,000 course offerings (approved during 1999 alone) viewed by the Department to be acceptable for appraiser continuing education. It appears that most courses approved for real estate and insurance agents and real estate contractors are approved for real estate appraisers, as well.

We reviewed 20 courses and consider 13 to be inappropriate for appraiser continuing education requirements (see attached list). Furthermore, based on the titles, we question the appropriateness of many other courses. The purpose of continuing education is to ensure that the appraiser participates in programs that maintain and increase his/her skills, knowledge, and competency in real estate appraising. Two-thirds of the courses we reviewed do not achieve that purpose.

To address our concerns, the Department must, within 90 days of receiving this letter, review all currently approved continuing education courses and document whether each offering meets the Appraiser Qualifications Board of the Appraisal Foundation's ("AQB") minimum education criteria for continuing education. Approval for courses not meeting AQB requirements should be rescinded immediately.

- **Registered Real Estate Appraisers**

Registered Real Estate Appraisers have not met the eligibility requirements to perform appraisals in connection with federally related transactions under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("Title XI"). The Department, however, does not specifically prohibit these appraisers from independently performing appraisal assignments in connection with federally related transactions. In fact, guidance issued to potential applicants states that a person in that category "probably cannot do federally related transactions." Registered Real Estate Appraisers must clearly understand that they cannot independently perform appraisals in connection with federally related transactions. They, however, may assist a licensed or certified appraiser, with proper supervision.

Within 90 days of receiving this letter the Department must:


1. Inform all Registered Real Estate Appraisers, in writing, that they are not qualified to perform appraisals independently in conjunction with federally related transactions;

2. Notify all lending institutions and other users of appraisal services of the scope of practice for these appraisers, with a list of all individuals currently holding the designation; and
3. Amend the "Real Estate Appraiser License Information" form and initiate action, if necessary, to amend Minnesota Statute 1999, Chapter 82B section 11 subpart 2 to appropriately reflect the scope of practice for Registered Real Estate Appraisers.

In addition to taking the above-discussed actions within 90-day time frames, please submit a response, within 60 days from receiving this letter, which includes a status report on your progress toward achieving corrective action. Until the expiration of that time 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. Due to the serious nature and the extent of our concerns over Minnesota's ability to carry out its Title XI responsibilities, we will return to your State for a follow-up review in approximately six months. At that time, we plan to review all files to measure the State's progress in resolving each of the items noted above.

If you have any questions, please contact

Sincerely,

A handwritten signature in black ink, appearing to read "Herbert S. Yolles". The signature is fluid and cursive, with the first name "Herbert" and last name "Yolles" clearly legible.

Herbert S. Yolles
Chairman