

Appraisal Subcommittee

Federal Financial Institutions Examination Council

June 24, 1997

David B. Gruenes
Commissioner of Commerce
Minnesota Department of Commerce
133 East Seventh Street
St. Paul, MN 55101

Dear Mr. Gruenes:

Thank you for your April 22, 1997 letter responding to our findings from our December 1996 field review of Minnesota's appraiser regulatory program ("Program"). We are pleased to know that you are addressing the last four items in our March 10 letter. We remain concerned, however, about the first issue raised in our letter, i.e., that investigators do not appear to have adequate expertise or education to review complaints and make recommendations regarding appropriate disposition.

In our March 10 letter, we noted that apparent violations of the Uniform Standards of Professional Appraisal Practice ("USPAP") were not identified by your investigators and that most of these violations appear to have been undetected because investigators were not sufficiently knowledgeable about USPAP requirements and did not explore other USPAP violations unless they were specifically cited in the complaint. We recommended that you only use investigators who have been trained in basic appraisal principles and remain abreast of USPAP changes to review appraiser complaints. In addition, we recommended that you encourage investigators to initiate related investigations if the investigatory process reveals appraiser activities warranting further disciplinary action. Finally, we suggested alternative ways to remedy this situation.

In your response, you noted that real estate appraising is but one of 17 different regulated professions within your jurisdiction and that your "real estate team" has four investigators and one supervisor responsible for investigating ten different subject areas. Because of your limited resources, you agreed that your investigators "do not attempt to identify each and every possible violation of USPAP[,]" and that they "address those areas that are most relevant and that would have a substantive impact on licensees and/or their work product" and "focus . . . on the overall integrity of the appraisal (e.g. Is the value placed on the property . . . a logical result of the utilization of good appraisal principles?)" You also informed us that, while your investigators occasionally may miss a technical violation of USPAP because they are not appraisers, you "are confident that they are identifying the most egregious violations and are certainly enforcing the 'spirit' of the USPAP." Finally, regarding investigators' education and training, you stated that investigators assigned to appraiser complaints have taken at least one USPAP course and other courses related to appraisal concepts and practices, have current copies of USPAP readily available, and read all pertinent Appraisal Foundation communications.

We agree that investigators need not be appraisers and that persons serving as investigators should have investigatory expertise. But, they also should have sufficient knowledge of industry rules, ethics and practices to ensure that they identify during the investigatory process, as often as

possible, all wrongful activity. Whether each of those activities is worthy of prosecution is another matter. We disagree with your assertion that many of the missed USPAP violations were technical; to us they were significant. We also found that, in many of these complaints, disgruntled consumers were somehow compensated for appraisers' indiscretions, and the investigations were closed with no further action. Essentially, these investigations appear to have been closed because the consumer was mollified.

We appreciate the importance of a State assigning priorities to cases based on the level of risk to public safety and consumer protection principles. Nevertheless, a State appraiser certifying and licensing agency ("State agency") has additional responsibilities under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Title XI's general purpose is to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals used in connection with federally related transactions are performed by persons with demonstrated competency who are supervised effectively by State agencies. Many of the "missed" USPAP violations, if proven, represent the kind of practice that Title XI was intended to prevent or correct.

While we agree that "the overall integrity of the appraisal" should be considered in determining whether a disciplinary action is brought, it should not be the only factor in that analysis. USPAP's focus is not limited to the "bottom line" value of a property, but the method in which data is collected, the appropriateness of the information used to derive value, and the manner in which the appraiser's analysis and conclusions are presented. In addition, USPAP has critical ethical, competency and departure requirements that must be actively considered by investigators and effectively enforced.

Title XI requires Minnesota to enforce USPAP's standards and principles and to dedicate sufficient resources to its enforcement. In that regard, Minnesota needs to ensure that its investigators have sufficient knowledge and expertise in USPAP to analyze complaints of appraiser misconduct thoroughly and to identify all USPAP violations during the investigatory process. We believe that additional education and training are appropriate.

We remain concerned about the enforcement of USPAP by Minnesota and will continue to monitor it and will focus on it during our next field review of your Program. Please do not hesitate to contact us if you have further questions.

Sincerely,

Herbert S. Yolles
Chairman

cc: Barbara Lessard
Enforcement Supervisor