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Appraisal Subcommittee

Federal Financial Institutions Examination Council

May 16, 2005

Mr. Timothy Moore, Chairperson
Montana Board of Real Estate Appraisers
301 South Park, 4th Floor
Helena, MT 59620-0513

Dear Mr. Moore:

Thank you for the Department of Labor and Industry, Business Standards Division, Business & Occupational Licensing Bureau's ("Department") and the Montana Board of Real Estate Appraisers' ("Board") cooperation and assistance in the March 7-8, 2005 Appraisal Subcommittee ("ASC") review of Montana's real estate appraiser regulatory program ("Program"). Montana's Program has serious weaknesses in its complaint investigation and resolution program that must be resolved to bring the Program into substantial compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended ("Title XI"). To fully comply with Title XI, the Department and Board need to address the following items.

- **Montana does not investigate and resolve complaints in a timely manner.**

In our August 2002 field review letter, we addressed Montana's failure to investigate and resolve complaints in a timely manner. It appears that Montana has failed to devote adequate resources to fulfill its Title XI responsibilities in this significant area.

We understand that there were two major factors affecting the timeliness of the processing and resolution of complaints. First, the Department and the Board did not process complaints from early 2000, when a lawsuit was filed by group of appraisers challenging the State's authority to take disciplinary action, until the lawsuit was settled at the end of 2002. Secondly, upon settlement of the lawsuit, there were insufficient legal resources to process the backlog of complaints.

While the Board lawfully adopted the 2002 version of USPAP, effective March 2002, the lawsuit's settlement agreement required the Board to use the 1991 version of USPAP in all cases where a respondent appraiser performed the appraisal at issue before March 2002. As a result, complaints related to pre-March 2002 appraisals accumulated. At the time of our current field review, 18 outstanding complaints were more than one-year old, including seven that were more than two-years old, and three more than three-years old.

During the March 8th Board meeting that our staff attended, the Board's Prosecuting Attorney stated that the increased number of appraiser-related complaints and the need to use the 1991 USPAP version had "swamped him with work," and he recommended that the Board dismiss all complaints with appraisal dates prior to March 2002. He explained that his lowest priority was prosecuting complaints that had to be reviewed and prosecuted on the basis of the 1991 USPAP version.

However, the Board chose not to issue a blanket dismissal regarding those cases. Instead, the Board decided that each complaint would be considered on a case-by-case basis as they are brought before the Board for action. The Board, on the Prosecuting Attorney's recommendation, dismissed two cases that involved appraisals conducted prior to March 2002. His recommendation was based on his belief that the potential violations in the cases were not serious enough to warrant further investigation and based on a review using the 1991 version of USPAP. Unlike the other 21 enforcement files that our staff reviewed, these two case files contained no investigation reviews or notes. The only documents in the files were the complaint and the appraiser's response letter. In our staff's view, these cases were dismissed inappropriately, and the files contained insufficient documentation.

We note that application processing also appears to have been adversely affected by a lack of sufficient legal resources. While on site, our staff found seven application files that remained open even though the Board had determined to deny them. In each of these cases, the attorney needed to send a default order to the applicants. The attorney, however, held these files for as long as 21 months without action. During that period, the applicants reapplied for their credentials, and the Board subsequently issued them. The application files were not closed until our staff informed Board staff about the open files on March 7, 2005.

One of the central purposes of Title XI is to ensure that appraisers who perform appraisals in connection with federally related transactions are competent, that their work conforms to USPAP, and that their professional conduct is effectively supervised. Montana must have an effective enforcement program, because effective enforcement is essential to fulfilling Title XI's purposes. In its August 16, 2002 field review letter, the ASC cited Montana's failure to investigate and resolve complaints in a timely manner. This continued, long-term weakness brings into question Montana's overall ability to supervise its appraisers effectively as contemplated by Title XI.

To address this concern, the Board and Department need to:

1. Develop and implement a comprehensive complaint investigation and resolution program that will facilitate investigation and resolution of complaints within one year of receipt, and forward that policy to the ASC;
2. Devote the necessary resources to complaint investigation and resolution to eliminate the outstanding backlog of cases and to assure the timely investigation, prosecution, and resolution of all appraiser-related complaints;
3. Ensure that all enforcement files contain appropriate documentation;
4. Ensure that all applications for appraiser credentials are processed on a timely basis;
and
5. Provide the ASC with complaint logs on a quarterly basis.

- **Montana did not report disciplinary actions to the ASC as required by ASC Policy Statement 9.**

ASC Policy Statement 9 states that it is critical for State agencies to report expeditiously to the ASC any disciplinary action taken against an appraiser. At a minimum, this information must be submitted monthly. For suspensions and revocations, the ASC strongly encourages State agencies to notify the ASC immediately.

Montana has not reported disciplinary actions for inclusion on the National Registry since 2002 and does not include disciplinary information in its National Registry database submissions. Instead, the Department chose to provide the ASC with hard copies of disciplinary actions. When staffing changes occurred in 2002, this practice ended. When Board staff learned of this situation, the staff immediately provided us information regarding seven recent disciplinary actions.

To address this concern, the Board and/or Department must:

1. Report to the ASC all disciplinary actions taken between 2002, and the recently reported disciplinary actions; and
2. Continue reporting disciplinary actions expeditiously to the ASC in the future, consistent with ASC Policy Statement 9.

- **Montana's temporary practice regulations do not conform to ASC Policy Statement 5.**

Montana's regulations require an applicant for a temporary practice permit to submit three appraisal reports for review. While on-site, we determined that the Board and Department, in practice, do not require the submission of those reports. The Board and Department have been drafting a set of regulations that, if adopted, will address the 2008 AQB criteria changes and cure a number of inconsistencies and problems. One provision in the current draft would eliminate this report submission requirement.

The Board and Department needs to remove, as soon as possible, the report submission requirement from its temporary practice regulations. Please provide us with a copy of that regulatory change once it is adopted.

- **Montana's regulations regarding appraiser education need to be amended to conform to AQB criteria and Board practice.**

Montana's regulations for qualifying education for certified and licensed credentials require a 15-hour USPAP course, but do not specify the "15-hour National USPAP Course" required by AQB criteria. While on-site, we determined the Board and Department, in practice, conform to AQB criteria by requiring the 15-hour National USPAP Course.

Montana's regulations do not allow distance education courses from accredited colleges or universities, even though such courses are permitted by AQB criteria. However, in practice, the Board accepts distance education courses from accredited colleges and universities.

The Board and Department are in the process of drafting regulatory amendments to accommodate the 2008 AQB criteria changes. The draft includes these two housekeeping issues to eliminate differences between its regulations and actual practice. Please provide us with a copy of the draft regulations for our review at your earliest convenience. We would also like to receive a copy of the final regulations once they are adopted.

Please respond to our findings and recommendations within 60 days following the receipt 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.

Please contact us if you have further questions.

Sincerely,

Virginia M. Gibbs
Chairman

cc: Grace Berger, Executive Officer