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# Appraisal Subcommittee

*Federal Financial Institutions Examination Council*

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

December 23, 1999

Farrell Rose, Chairperson  
Montana Board of Real Estate Appraisers  
111 N. Jackson Street  
Helena, MT 59620

Dear Mr. Rose:

Thank you for your September 30, 1999 letter responding to our July 22, 1999 field review letter. While we appreciate your efforts to address the concerns stated in our July 22<sup>nd</sup> letter, some concerns remain unresolved. In fact, because of your response regarding temporary practice, our concern in that area has increased.

- **Temporary Practice**

In our July 22, 1999 letter, we noted that your temporary practice procedures did not conform to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (“Title XI”) and Appraisal Subcommittee (“ASC”) Policy Statement 5 thereunder. More specifically, we noted that your temporary practice application required permits to be issued for six months or the length of the contract, whichever comes first, and that permits could not be renewed. In your September 30 response, you noted that the Board of Real Estate Appraisers (“Board”), as part of the Montana Department of Commerce (“Department”), is statutorily authorized to issue temporary permits only when appraisers apply for permanent licensure or certification in Montana. You also stated that the Montana legislature could not cure this deficiency until the next legislative session beginning in January 2001. Finally, you noted that, until then, out-of-State appraisers could apply for permanent certification or licensure under reciprocity. Montana charges \$300 for initial certification or licensure via reciprocity and \$200 thereafter for annual renewal.

Following our receipt of your letter, our General Counsel, Marc Weinberg, initiated a series of telephone calls and e-mails with Lori Ballenger, Legal and Investigative Bureau Chief in the Montana Department of Commerce. These communications focused on exploring creative regulatory ways to provide temporary practice as required by Title XI. On Friday, December 10, Mr. Weinberg received an e-mail from Ms. Ballenger apologizing for the delay in responding to the issue, stating that:

I had everyone on the legal staff review the relevant statutes to ensure that we had a consensus. Unfortunately, I do not think the result is going to be to your liking. Our current law regarding temporary practice permits requires that the individual must be seeking licensure in the state in order for us to issue a temporary permit.

As we discussed, the Montana legislature meets every two years so there is no opportunity for us to change the law until the 2001 session. We have

already begun to look at possible legislative changes. I can assure you that we will look at changing this to conform to the ASC's policy statement 5. Until then, we will not be able to approve any temporary practice permits unless the Licensee is also applying for licensure in this state.

You suggested that we handle temporary practice by regulation however, at this time we have a statute, §35-1-305, MCA [correct citation is § 37-1-305], which specifically addresses temporary practice permits. Subsection (2) of the statute states "A board may issue a temporary practice permit to a person seeking licensure in this state who has met all licensure requirements other than passage of the licensing examination." There is no other way to interpret that language other than to require a person be applying for licensure in order to obtain a temporary practice permit.

We are aware of at least one other state, Wyoming that does not allow for temporary practice permits. They obviously have a clear violation of title XI in a critical area and yet you allow their program to continue. It is our hope that we will be given the same consideration and our program will be allowed time to take this matter to the legislature for action.

It is important to note that § 37-54-406 of the Montana Code Annotated recognized temporary practice, as required by Title XI. That section, which was contained in special statutory provisions applicable to the Board, however, was repealed in 1995. As a result, the problematic "temporary practice" provision cited above, which is contained in statutes generally applicable to the Division as a whole, became fully effective. We understand that the State continued to provide temporary practice after § 37-54-406 was repealed. As a matter of policy, while we strongly prefer that States have specific statutes and regulations implementing Title XI's temporary practice requirements, we look to see how States practically implement those requirements. While flawed, Montana was providing temporary practice. Based on your letter and Ms. Ballenger's email, it appears that this is no longer true.

Section 1122(a) of Title XI, 12 U.S.C. 3351(a), requires Montana to recognize on a temporary basis the certification or license of an appraiser from another State provided: (1) the property to be appraised is part of a federally related transaction; (2) the appraiser's business is of a temporary nature; and (3) the appraiser registers with the State appraiser regulatory agency in the State of temporary practice. That subsection also requires Montana not to impose excessive fees for, or burdensome requirements on, temporary practice, as determined by the ASC. ASC Policy Statement 5, in pertinent part, sets out, the following fees, acts, and practices, among others, as "excessive fees" or "burdensome requirements":

- Prohibiting temporary practice;
- Requiring temporary practitioners to obtain a permanent certification or license in the State of temporary practice;
- Taking more than five business days (after receipt of a complete temporary practice registration request) to issue a temporary practice permit (if issuance is required under State law) or to provide effective notice to the out-of-State appraiser regarding the status of his or her temporary practice request;

- Limiting the valid time period of a temporary practice permit to less than six months after its issuance date and not providing a temporary practitioner with an effortless method of obtaining an extension of the time period; and
- Charging a temporary practice fee exceeding \$150.

Montana must provide temporary practice, as that term is defined in Title XI and interpreted in ASC Policy Statement 5, to non-resident certified or licensed appraisers performing appraisals in connection with federally related transactions within Montana. Satisfaction of that requirement should not be delayed until some time in 2001, if other remedies are available.

Towards that end, Montana must take all necessary steps to provide temporary practice as expeditiously as possible. Within 60 days from your receipt of this letter, provide us a written report describing and analyzing any and all methods to attain conformance with Title XI's temporary practice requirements. At a minimum, that report should:

- Analyze ways to expedite curative legislation, including convening a special legislative session and initiating any "fast track" legislative remedy;
- Analyze possible amendments to your current reciprocity regulations and fees to enable them to meet, in practice, Title XI's temporary practice requirements, at least on an interim basis; and
- Address any other methods or combinations of methods to remedy this situation.

Finally, you noted that at least one other State, Wyoming, does not allow for temporary practice permits, and that we have allowed its program to continue. For your information, we recognized in our July 24, 1998 field review letter to Wyoming that it did not provide temporary practice, and we instructed it to "take the necessary steps to ensure that [its statute] is amended to provide for temporary practice . . . ." We also noted that the State's appraiser regulatory agency on several occasions had tried, unsuccessfully, to cure this deficiency. The State argued that its liberal reciprocity provisions, in essence, satisfied Title XI's temporary practice requirements. We disagreed because Wyoming did not have reciprocity agreements with 20 States, did not have a licensure category, and charged \$450 for a reciprocal credential, far exceeding the \$150 limit required by ASC Policy Statement 5. Since then, we have been in close contact with Wyoming. In early 1999, curative legislation again was proposed, but because the temporary practice provisions were included in a broader package with objectionable provisions, the whole bill was killed in committee. Like Montana, the Wyoming legislature does not meet until 2001. We are sending a letter similar to this one to Wyoming.

- **Complaints are not resolved**

In our July 22 letter, we instructed the Board to investigate and resolve complaints in a timely and effective manner. We also required Montana to provide adequate legal assistance to the Board to facilitate this process. Finally, the Board was required to provide us with written quarterly reports regarding the status of each open complaint. Your September 30 letter included a table summarizing the current status of all complaint files received from fiscal years 1994 through 1999. That table informed us that only 19 complaints remained open, all from 1999. We are pleased to see that you have updated your records and/or made substantial progress in reducing the number of complaints identified as "open" during our June 7-8, 1999 field review, and we hope that you will continue processing complaints on a timely and effective basis.

- **File documentation needs to be improved**

Also in our July 22 letter, we noted that application, temporary practice, educational, and enforcement files were not maintained in chronological or any other progressive order; documents were duplicated or missing; and there was a substantial reliance on secondary documents, such as notebook listings, rather than on original or “master” documents. We concluded that your documentation needs to be improved, especially in light of the impending high-level personnel changes. You concurred that not all files were maintained in any particular order, but that the process of cleaning up the files had begun. You stated that files will be maintained in an orderly fashion. You also asked whether Title XI requires how files are to be maintained and specifies what are “master” files. Title XI does not require specific filing methods or make such specifications. You may keep your files in any reasonably ordered fashion. We only ask that they be maintained in such a way to facilitate your staff’s easy access and administration. Such a system also will ensure that we can perform our oversight responsibilities in an effective and prompt manner. We appreciate your efforts in this area.

We look forward to receiving your quarterly disciplinary action report soon and your response regarding temporary practice within 60 days. Please contact Ben Henson, the Executive Director of the ASC, if you would like to discuss these matters further. Also, please contact Mr. Henson if you believe that we could assist in resolving your legislative dilemma regarding temporary practice.

Sincerely,

Herbert S. Yolles  
Chairman