



**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS
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October 30, 2000

Thomas E. Watson, Jr., Chair
Appraisal Subcommittee
Federal Financial Institutions Examination Council
2000 K Street, NW, Suite 310
Washington, DC 20006

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Dear Mr. Watson:

Thank you for your letter of August 15, 2000 setting forth the Appraisal Subcommittee's (ASC) report pertaining to its June 7-8, 2000 audit of the Pennsylvania State Board of Certified Real Estate Appraisers (Board) and appraiser regulatory program.

The ASC's report identified three areas of concern. The first pertains to Pennsylvania's complaint investigation and resolution process. The second concern involves inconsistent statutory and regulatory provisions. And the third relates to National Registry data. The Board offers the following comments in response to the report in an effort to address the ASC's concerns.

A. Complaint Investigation and Resolution

The ASC's expressed concern about Pennsylvania's complaint investigation and resolution process is that it takes too much time. In support of its findings, the ASC notes that "between 1992 and 1997, over 40% of the 291 resolved cases took more than one year to resolve, while at least 20% of the cases took more than two years. Twenty four cases took three and a half to six years to resolve." While the Board agrees that such extended time periods could diminish the effectiveness of the Board's enforcement program, the Board is disappointed in what it perceives as a slightly skewed interpretation of Pennsylvania's statistics. The Board is equally disappointed in the ASC's failure to take into consideration a very critical factor which contributed to the extended period of time which it took to process a complaint from beginning to end during the Board's earlier years.

That critical factor, as the Board's staff explained during the ASC's review of Pennsylvania's complaint investigation and resolution program, is the fact that nearly all of the Board's files and records, including all of its complaints and completed investigative reports, were rendered inaccessible in June of 1994, when a six-alarm fire engulfed the 6th Floor of the Transportation and Safety Building in which all of the Board's offices were then housed. The fire resulted in contamination of the premises and all of its contents with PCBs and asbestos. Complaint files and investigative reports had to be reconstructed, a process which was not finally completed until mid- to late 1997. This

disaster served not only to slow down the processing of complaints that had been contaminated in the fire, but also to delay the processing of newly received complaints. For months after the fire, the entire Legal Office which serves the Board and twenty-six other licensing entities was housed in a single room, working elbow to elbow, with surplus furniture and limited resources. During the first years following the fire, staff had to divide their time between reconstructing fire-contaminated cases and processing more current complaints. This, undeniably, resulted in a substantial backlog of cases.

And it is this substantial backlog of cases that skews the numbers pertaining to Pennsylvania's complaint and investigation process through 1997, the year with which the ASC ended its review. Despite that backlog, however, as the enclosed report (Enclosure A) reveals, between 1992 and 1997, the average period of time it took to resolve complaints in which discipline was actually imposed declined considerably. In fact, in 1998 and 1999, the average number of months to resolve a complaint from start to finish dropped to 7.5 months and 9.9 months, respectively. The statistics are comparable for those cases in which no discipline was imposed. Had the ASC looked beyond 1997 in its audit, it would have noted considerable improvement in Pennsylvania's complaint investigation and resolution processing time. In fact, Pennsylvania's complaint investigation and resolution process, on average, now meets and at times exceeds the ASC's recently stated goal that all complaints be resolved within one year's time.

The Board also reiterates two points it made at the time of the audit. Firstly, in cases which require prosecution, and which cannot be settled, Pennsylvania's laws entitle a certificate holder in a disciplinary action to due process, including a hearing, the right to file post-hearing briefs, and related rights. The ethical and legal obligations to comply with those due process requirements make it unlikely that such a case can be lawfully resolved in less than one year. Additionally, in contrast to the report's implication that cases resolved by a consent order should be resolved more quickly, many certificate holders who ultimately resolve a case by entering into a consent order may initially avail themselves of all their hearing-related procedural rights, which delays the eventual resolution of the case.

The foregoing mitigating factors notwithstanding, the following enumerated actions comprise the plan that the Board has implemented to address the ASC's concerns about Pennsylvania's appraiser complaint investigation and resolution process:

1. The Prosecution Division will utilize an Appraiser Board member as a resource person.

At the suggestion of the ASC, the Board has developed a procedure for utilizing an Appraiser Board member as a resource person for the Prosecution Division. Under this procedure, a Board member will be available to legal assistants and to prosecuting attorneys to provide guidance on various issues, including how to tailor an investigation to unusual circumstances; whether further information or documentation is needed before the prosecutor can move forward on a spec case; whether or not expert review is necessary; whether a settlement should be proposed; and if so, what the appropriate penalty might be. The Board member serving as the resource person will recuse him- or herself from any board deliberations and/or discussions related to any case in which the Board member has been involved.

2. The Board will increase the number of expert consultants on contract and available to review standard-of-practice complaints for the Legal Office.

The Board is contracting with nine (9) additional consultants to provide expert services to the Prosecution Division, increasing the existing pool of available expert consultants to seventeen (17). The Board anticipates that with this additional complement the length of time required for an expert to review a case will be shortened because fewer cases will be assigned at one time to the same expert for review.

3. The Board will initiate utilization of citation sanctions for minor statutory and regulatory violations in accordance with existing Pennsylvania law.

The Board is in the process of identifying categories of minor statutory and regulatory violations that would be appropriate for the issuance of citations under the Act of July 2, 1993, P.L. 345, No. 48, 63 P.S. §2201 et seq. (Act 48). Under Act 48, the Commissioner of the Bureau of Professional and Occupational Affairs (Bureau), after consultation with the Board, is authorized to adopt a schedule of civil penalties for: (1) operating without a current and valid certificate, registration or permit; and (2) violating a licensing board act or regulation relating to the conduct or operation of a business licensed, registered or certified by a licensing board. Upon the Board's adoption and publication of guidelines which set forth a schedule of civil penalties, the Board will be authorized, via its prosecution and investigative arm, to cite certificate holders for minor infractions of the act and regulations. The process is very similar to a traffic ticket violation. If the certificate holder admits to a violation of the cited provision of the act or regulations, the certificate holder submits payment of the imposed civil penalty, and the case is closed. If the certificate holder chooses to contest the citation, a hearing is scheduled within 90 days before a hearing examiner of the Bureau, and a decision is issued forthwith. This process has worked very successfully for other licensing and certification boards within the Bureau, and allows prosecuting attorneys to focus their attention on more serious types of violations.

4. The Board will provide training pertaining to investigation of appraisal complaints to the staff who provide it with legal services.

In order to facilitate the more timely processing and investigation of complaints, the Board will provide training to investigators within the Bureau of Enforcement and Investigation (BEI), which is the Board's investigative entity; to the legal assistants in the Bureau's Complaints Office; and to the assigned prosecuting attorneys and the Appraiser Board Prosecution Liaison. The training will focus on issues pertinent to investigations, including what information and documentation should be obtained in the investigation of the typical standard-of-practice case.

5. The Board will establish penalty guidelines to facilitate settlement in certain categories of cases.

In order to assist prosecuting attorneys in the negotiation of consent agreements, which the Legal Office utilizes to settle pending disciplinary actions without having to proceed through the lengthy hearing process, the Board will be developing penalty guidelines for the prosecuting attorneys. The guidelines will reflect what penalties the Board considers to be appropriate in various classes of cases.

B. Inconsistent Statutory and Regulatory Provisions

The ASC recommends that the Board amend its regulations to be consistent with the criteria for appraiser education and experience established by the Appraiser Qualifications Board (AQB). The ASC notes that the Board's current regulations are not consistent with AQB criteria with regard to the standards for approving distance education courses and the acceptability of teaching experience towards appraiser experience credit. The Board will amend its regulations to conform to AQB criteria. Before taking final action to adopt the amendments, the Board will submit the amendments in proposed form to the general public within the Commonwealth for comment, and will provide them to the ASC for that purpose as well. The Board would appreciate your comments in this area.

The ASC also recommends that the Board consider adopting regulations that clearly delineate the scope of practice for the certification class of broker/appraiser, which was added to the Real Estate Appraisers Certification Act

(REACH) in 1996. The ASC notes that there appeared to be some uncertainty among Board members and Bureau staff regarding what transactions certified broker/appraisers are ineligible to perform under the Financial Institutions Reform, Recovery and Enforcement Act and other federal statutes and regulations. There also appears to be some confusion by ASC staff as to when the Federal National Mortgage Association requires the use of certified appraisers.

Representatives of FNMA disagree with ASC staff statements that all appraisals for or on behalf of FNMA are subject to FIRREA. The Board believes that clearly defined scope of practice regulations for all three of its appraiser certification classes would be beneficial to appraisers and users of appraisal services as well as to the Board and Bureau staff. However, broker/appraiser certificate holders and certified Pennsylvania evaluators, both under the jurisdiction of the Board, are not subject to ASC oversight. Any future audit should be limited to the appraiser classifications permitted to perform appraisals in connection with federally related transactions.

The ASC further recommends that the Board seek to have the REACH amended to add the licensed appraiser classification. The ASC comments that the absence of the licensed appraiser classification makes it impossible for licensed appraisers in other states to qualify for temporary practice or reciprocity in Pennsylvania.

Since its creation in 1990, the Board has received very few inquiries from licensed appraisers for permission to practice in Pennsylvania either on a temporary basis or on a permanent basis through reciprocity. Section 8 of the REACH specifically authorizes the Board to issue temporary practice permits to licensed appraisers. Additionally, the Board has entered into reciprocal certification agreements with many states that also credential licensed appraisers. Although licensed appraisers from reciprocating states must satisfy requirements equal to the residential certification level before they can practice in Pennsylvania on a permanent basis, the Board has recognized their previously acquired education and experience hours and, in those cases where they have passed the same examination that was offered to candidates for residential certification, their examination scores as well. The Board believes it would be difficult to persuade Pennsylvania's General Assembly that circumstances are sufficiently exigent as to warrant the addition of a fourth appraiser classification to the REACH at this time.


C. National Registry Data

The ASC states that its comparison of the Board's list of disciplinary actions with those listed on the National Registry indicates that Pennsylvania has failed to submit several disciplinary actions to the ASC as required by *ASC Policy Statement 9 - Information Sharing*. However, the Board has reviewed its files and confirms that it has reported to the National Registry all disciplinary actions which it has imposed on certified real estate appraisers since the Board's inception. Indeed, the Board sends a monthly report listing any and all actions taken. In fact, at the ASC's request, the Board has twice previously provided the ASC with lists of all disciplinary actions imposed on certified real estate appraisers since the Board's inception. The Board has not, however, reported to the National Registry any disciplinary actions that the Board has taken against certified Pennsylvania evaluators or certified broker-appraisers, both of which are certificate classifications that fall outside the ASC's oversight, since holders of these certificate classifications are not permitted to perform appraisals in federally-related transactions. Nor has the Board reported disciplinary actions imposed on out-of-state persons.

Nonetheless, to address this concern as the ASC requests, the Board includes with this letter a complete, up-to- listing (Enclosure B) of all disciplinary actions imposed on certified real estate appraisers since the beginning of Pennsylvania's regulatory program, and the Board will continue to report disciplinary actions against certified real estate appraisers to the ASC in a timely manner as the Board has done in the past.

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This letter addresses the concerns raised in your audit report. The Board looks forward to working with the ASC to deal with its concerns.

Sincerely

David J. King, Chairman
Commonwealth of Pennsylvania
State Board of Certified Real Estate Appraisers

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Enclosures

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