

□   □   □   □   □   □

# Appraisal Subcommittee

*Federal Financial Institutions Examination Council*

July 16, 2008

[DELETED]

Dear [DELETED]:

This letter responds to your email message, and accompanying attachments, dated February 12, 2008. In your message, you stated that current policies imposed by the Arizona Board of Appraisal (“Board”) effectively make it impossible for out-of-state appraisers to obtain a temporary permit in Arizona. Specifically you believe the State’s temporary practice application procedures were a clear violation of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, amended, (“Title XI”) and *Appraisal Subcommittee (“ASC”) Policy Statement 5: Temporary Practice* (“Policy Statement 5”). ASC staff conducted a field review of the Arizona appraiser regulatory program in January 2008 and the State’s temporary practice processing procedures were evaluated as part of the field review. While our complete review findings are not yet publicly available, we can reveal that we do not agree with your assertions and believe Arizona processes temporary practice permit applications in accordance with ASC Policy Statement 5 and Title XI.

When Congress adopted Title XI, it did so with the recognition that the States’ possessed the operational and functional expertise in licensing, certifying, and supervising persons in various professions and, therefore, placed the responsibility to license, certify and discipline appraisers at the State level. Congress also established the ASC and established as one of its charges, the oversight of the Title XI –related functions and activities of the State appraiser regulatory agencies. Because Title XI’s requirements are minimums, States may adopt more stringent qualifications, standards, and application processes for appraisers, providing they do not conflict with Title XI’s provisions.

One Title XI requirement relates to temporary practice. §1122(a)(1) of Title XI requires State appraiser regulatory agencies to recognize on a temporary basis the certification or license of an appraiser issued by another State if: (1) the property to be appraised is part of a federally related transaction, and (2) the appraiser’s business is of a temporary nature. The third condition noted in that section states the appraisers must, “register with the State appraiser regulatory agency in the State of temporary practice,” thus affording the State in which temporary practice is being sought a degree of discretion as to whom it will allow to practice within its borders. It is in recognition of this discretion that, at §1122(a)(2) of Title XI, States are limited to establishing registration or application requirements and procedures that are not burdensome or imposing fees that are not excessive. The Riegle Community Development and Regulatory Improvement Act of 1994 at §315, required the ASC to define excessive fees and burdensome requirements to clarify the intent of §1122(a)(2) of Title XI. In response, the ASC amended Policy Statement 5 to specifically identify the fees, acts, and practices we would deem excessive and/or burdensome,

with consideration of our charge under both Acts. The ASC published the revised policy in the Federal Register at 62 F.R. 19755 on April 23, 1997, after an extensive comment period.

While States must refrain from engaging in handling temporary practice requests in a manner that does not comply with ASC Policy Statement 5, States may impose additional requires of applicants, in order to obtain a temporary permit. Such is the case with a request for applicants to disclose their criminal and disciplinary histories. The State has the authority to receive information about individuals it has or may have allowed to practice within its borders. That information helps to ensure that States may make well-informed, reasonable decisions when issuing professional credentials. Among other things, the information may be used to deny issuance of a temporary permit, bar the receipt of a temporary permit in the future, should one be requested, and/or shared with the other State(s) within which the applicant holds a credential for further review and consideration on their part. Therefore, while States must provide temporary practice under Title XI and in accordance with ASC Policy Statement 5, each appraiser's right to obtain a temporary practice permit under that Title is not absolute. It is with this prospective that we evaluate all appraiser regulatory agencies and the manner in which they offer temporary practice.

In response to your specific concerns about delays in processing applications that may be experienced due to the State requirements for applicants to submit fingerprint cards and letters of good standing from every State in which they hold or has every held a credential, we offer the following comments. Executive Director Deborah Pearson, finger print cards must be submitted with the temporary practice application. Based on our review of the files and conversations with Executive Director Deborah Pearson, we found that the issuance of the temporary practice permit were not delayed pending the State's receipt of the results of the criminal history report. In addition, the fee charged for the criminal back ground check is not given to the Board, but to the entity processing the criminal background report. Consequently, it is not considered a factor in the Policy Statement 5 established \$150 fee threshold, above which the temporary practice fee is considered excessive.

During the January 18<sup>th</sup> meeting of the Arizona Board of Appraisal ("Board"), we encouraged the Board to, under the auspices of best practices, authorize the staff to use the National Registry License History report as generated based on the National Registry database, instead of requesting letters of good standing from every state in which the temporary practice applicants hold or have ever held an appraiser credential. Based on our comments, the Board voted to authorize the staff to rely solely on the National Registry report.

We trust you will find the responsive. Please contact us if you have further questions.

Sincerely,

Vicki Ledbetter  
Acting Executive Director