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# Appraisal Subcommittee

*Federal Financial Institutions Examination Council*

March 16, 2005

Andrew Metcalf, Jr., Director  
Bureau of Commercial Services  
Department of Labor and Economic Growth  
P.O. Box 30018  
Lansing, MI 48909-7518

Dear Mr. Metcalf:

Thank you for your January 10, 2005 letter responding to our October 18, 2004 letter regarding our continuing concerns about Michigan's real estate appraiser complaint investigation and resolution program ("program"). As discussed more specifically below, we remain very concerned about your program.

In our October 2004 letter, we noted that, at the time of our June 2004 field review, 61 of the 416 complaints received between August 2001, and April 2004, had been in the investigation and resolution process for more than one year. These delayed investigations/resolutions have persisted despite Michigan's efforts to address this concern. We further noted that the Michigan Board of Real Estate Appraisers ("Board") meeting only twice annually had been a contributing factor in Michigan's failure to resolve complaints in a timely fashion. We also noted that we discussed delays in resolving complaints and the infrequency of Board meetings in our 1997, 2000, and 2001 field review letters – an almost eight year period.

To assist in our determination of the State's ability to resolve our concerns, we asked you to provide us by November 30, 2004, a description of the actions you plan to implement to resolve this longstanding concern. And, we noted that an increase in Board meetings from two to three per year would not appear to be adequate to resolve this concern. We received your response on January 14, 2005.

In that response, you described two actions that you plan to implement to address our concerns. First, after reviewing all complaint files open for more than one year, you identified areas in which you can reduce delays by up to 90 days by placing a higher priority on processing appraiser complaints. Second, you stated that you will try and schedule the number of Board meetings necessary to provide prompt action. We appreciate your efforts in both of these areas and hope that they prove successful in reducing the backlog of dated complaint cases.

The remainder of your letter addressed factors that limit your ability to address this concern. In essence, you stated that the Bureau of Commercial Services ("Bureau") and Board have experienced increasing numbers of complaints without corresponding increases in resources. Additionally, you pointed out structural barriers that impede more timely performance of that work. You stated that the Bureau's resources have to be allocated equitably over each of the 28 occupations and professions regulated by the Bureau. You indicated that Michigan's efforts are complicated by the fact that Board members are not compensated for their Board-related duties and are reluctant to do more without being compensated "at their professional hourly rate plus premium travel costs." And, because of budget constraints, Board members must review complaint files for Uniform Standards of Professional Appraisal Practice ("USPAP") compliance

and provide expert testimony because the Bureau and Board cannot contract with outside appraisers for those purposes. You also stated that delays are unavoidable because respondent appraisers must be provided with due process, and the Bureau and Board do not have control of the administrative hearing process.

Finally, you stated your view that ASC Policy Statement 10's one-year complaint processing standard is an Appraisal Subcommittee ("ASC") preference, not a requirement and that meeting that standard may not be realistic.

We appreciate the difficulty of allocating resources equitably to ensure that all regulated occupations and professions receive their fair share of resources. These allocation determinations are made even more difficult when one occupation or another experiences increased regulatory activity and resource levels stay constant or are reduced. Most States are facing resource limitations and many are experiencing increases in appraiser-related complaints. Each Title XI jurisdiction must evaluate its situation and take whatever actions are necessary to implement effective appraiser supervision.

Nevertheless, the Board's responsibilities and the Bureau's appraiser-related operations are unlike any others within the Bureau. These responsibilities are subject to Federal regulation and oversight. The Board and the Bureau must perform their appraiser regulatory functions in compliance with Federal law, *i.e.*, Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, ("Title XI"), for the State to issue appraiser credentials that convey authority to appraise in connection with Federally related transactions.

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. That purpose must be met notwithstanding limited State budgetary resources and administrative impediments. Michigan, and all other Title XI jurisdictions, must have an effective program, because effective enforcement is essential to fulfilling Title XI's purposes.

The ASC adopted Paragraph E of ASC Policy Statement 10 to help ensure that States have effective enforcement programs. While we agree that the Policy Statement does not require that each complaint must be finally processed administratively within one year of its filing date, the ASC also stated within that paragraph that each State needs to ensure that its entire system for processing and investigating complaints and sanctioning appraisers is administered in an effective manner. Timeliness in resolving complaints is a central aspect of that effectiveness. The Policy Statement recognizes that fact by *requiring* the processing of complaints of appraiser misconduct or wrongdoing on a timely basis. The "one-year" test is a standard by which the ASC measures the State's ability to effectively supervise its appraisers. Michigan has failed to meet this timeliness standard since 1997. This continued, long-term failure brings into question Michigan's overall inability to supervise its appraisers as contemplated by Title XI.

Title XI compliance is a statewide responsibility. If more than one component of State government performs Title XI appraiser regulatory tasks, all of those components must perform them in a manner consistent with Title XI. If challenges arise, the various State components must work together to find solutions to those problems to ensure Title XI compliance.

We recognize that Title XI compliance is made more difficult by scarce resources, budgetary constraints, and structural difficulties. Nevertheless, Michigan (and any other State facing those

difficulties) needs to find creative ways to ensure compliance. Varying allocations of scarce staff resources and funds may have to be made, the number of Board meetings may need to increase, volunteer Board members may need to be compensated, outside contracting authority may have to be authorized, and special case processing procedures may need to be implemented.

We plan another follow-up review to coincide with the Board's August 2005 meeting. We will focus on your complaint investigation and resolution program during that review.

Please contact us if you have any questions.

Sincerely,

Ben Henson  
Executive Director

cc: Jean Boven, Licensing Division Director  
Archie Millben, Enforcement Division Director  
John A. Lyman, Board Chairperson