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Appraisal Subcommittee

Federal Financial Institutions Examination Council

October 12, 2004

Mr. Glenn Wilson
Commissioner, Department of Commerce
85 – 7th Place East, Suite 600
St Paul, MN 55101-3165

Dear Mr. Wilson:

Thank you for your staff's cooperation and assistance in the August 4-5, 2004 Appraisal Subcommittee ("ASC") review of Minnesota's appraiser regulatory program ("Program").

Our review revealed serious weaknesses in Minnesota's Program. As a result, we have determined that Minnesota is not in compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended ("Title XI").

To assess the Department's efforts to address these weaknesses, ASC staff will return for a follow-up review in six to nine months from the date of this letter. Also, we plan to schedule a full review of the Program in approximately 18 months after the date of our August 2004 review. The remainder of this letter details our findings and recommendations for corrective action.

- **The Department's complaint investigation and resolution process fails to provide adequate appraiser supervision as required by Title XI.**

The Department received 240 appraiser complaints since our previous review in November 2001. At the time of our 2004 review, 31 of the 76 open cases had been in process for more than one year. Two of those cases had been open longer than three years, and another two cases longer than four years. Minnesota closed 162 complaints since our previous review. Many of the closed cases took more than one year to complete, with some taking as long as three to four years. Based on ASC staff analysis of the Department's complaint log, individual complaint case files, and discussions with Department staff, the ASC finds that Minnesota has failed to administer an effective complaint investigation and resolution program as required by Title XI.

It is our understanding that the five investigators involved with complaints against appraisers do not have an appraisal background. While each has received Uniform Standards of Professional Appraisal Practice ("USPAP") training in previous years, these individuals have not taken continuing appraiser education or training. Also, only one of the investigators has had even basic appraisal training. USPAP changes annually. It is critical that individuals determining compliance with USPAP obtain the necessary training on a regular, recurring basis to maintain their expertise. Also, it is important that someone with a good understanding of appraisal practices be involved in reviewing appraisal reports for technical compliance and appraiser competency.

ASC Policy Statement 10 provides that, absent special circumstances, final State administrative decisions regarding complaints should occur within one year of the complaint

filing date. The State needs to take the necessary actions to comply with ASC Policy Statement 10. Additionally, the Department needs to:

1. Ensure that complaints against appraisers are reviewed by an individual who has adequate, up-to-date training in USPAP, appraisal practices, and methodologies. The Department may need to contract for outside expertise or provide adequate training to its investigators;
 2. Inform us of how you plan to reduce the backlog of outstanding complaint cases and how you plan to manage ongoing complaint investigation and resolution in a timely manner; and
 3. Provide a complaint log to the ASC quarterly to allow us to monitor your progress.
- **The Department does not have a reliable means of validating continuing education claims of appraisers applying to renew certified credentials.**

As part of its credential renewal process, the Department accepts from renewing appraisers affidavits attesting to the required hours of continuing education. In March 2003, the Department discontinued its practice of auditing a sample of continuing education affidavits. Additionally, ASC staff found that the audit files for affidavit audits from prior years were not documented adequately to support the validation/audit process. Also, ASC staff was informed by Department staff that the Department had not taken any disciplinary actions against appraisers who failed the audit process. Rather, the Department simply allowed the appraiser the opportunity to take the courses needed for compliance.

The ASC finds that Minnesota's process of accepting affidavits for renewing certified appraiser credentials does not comply with Title XI because the Department does not have a reliable means of validating the continuing education claims.

To address this concern, the Department needs to:

1. Prepare a listing of all certified appraisers whose credentials were renewed during the August 2003 and 2004 renewal cycles;
2. By December 31, 2004, audit the continuing education claims of at least ten percent of the appraisers identified in step 1;
3. Identify appraisers who fail to conform to AQB criteria and take appropriate disciplinary actions against those appraisers. For certified appraisers who do not currently meet AQB criteria, immediately begin the necessary steps to downgrade them to non-certified classifications; and
4. Modify its acceptance of continuing education affidavits to comply with ASC Policy Statement 10, which becomes effective January 1, 2005.

- **Minnesota’s temporary practice provisions do not comply with Title XI and ASC Policy Statement 5.**

The Department takes, on average, 19 business days to process completed temporary practice applications. Several applications took much longer than 19 days. Also, Minnesota does not allow for at least one easy extension to an existing permit. Title XI prohibits burdensome practices, as determined by the ASC. ASC Policy Statement 5 defines burdensome practices as those that take more than five business days after receiving a completed application to act on an application and that fail to allow for at least one easy extension.

To address these concerns, the Department needs to evaluate and streamline its temporary practice application process to achieve a five-day processing timeframe, as required by ASC Policy Statement 5. Also, the Department needs to amend its regulations to allow for one easy extension of an existing temporary practice permit.

- **Several sections of the Department’s regulations are inconsistent with Appraiser Qualifications Board (“AQB”) criteria.**

Although Minnesota adopted by statute and rule some of the January 1, 2003 AQB criteria changes, it did not adopt all of the changes. Specifically, the Department needs to amend its regulations to include all components of the AQB criteria regarding the 15-hour National USPAP Course and the 7-hour National USPAP Update Course. We recognize that the Department is conforming to the criteria in practice. Nonetheless, the Department needs to amend its regulations to eliminate any differences between its regulations and actual practice.

The Department’s regulations allow acceptance of teaching appraisal courses as qualifying experience. The AQB criteria do not allow this. While the Department has not accepted this form of experience from anyone applying for certification, the Department needs to eliminate the provision from its regulations.

Department staff informed ASC staff that the Department is in the process of drafting revisions to Minnesota’s statute and regulations to conform to AQB criteria and to resolve these issues. We encourage you to provide the ASC copies of the proposed statutory and regulatory revisions for our review. Also, once the revisions are adopted, please provide copies to the ASC.

Please respond to our findings and recommendations within 60 days from the date of this letter. Until the expiration of that time 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.

If you have any questions, please contact us.

Sincerely,

Virginia M. Gibbs
Chairman

cc: Bonnie Polta
Market Assurance Supervisor

Susan Bergh
Licensing Director