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# Appraisal Subcommittee

*Federal Financial Institutions Examination Council*

August 12, 2005

Glenn Wilson, Commissioner  
Department of Commerce  
85 – 7<sup>th</sup> Place East, Suite 600  
St Paul, MN 55101-3165

Dear Mr. Wilson:

Thank you for your staff's cooperation and assistance in our follow-up review of Minnesota's real estate appraiser regulatory program ("Program") on June 29, 2005, in Saint Paul, Minnesota. Our follow-up review focused on concerns identified in the Appraisal Subcommittee's ("ASC") October 12, 2004 field review letter.

We are pleased that the Department appears to be making a concerted effort to address our concerns. Nevertheless, further work is needed. In particular, because the State inappropriately accepted certain continuing education claims from appraisers and apparently failed to take appropriate disciplinary action regarding those appraisers' actions, the State needs to revisit those cases and address them in a more appropriate fashion. In addition, because of the unacceptably high failure rate in connection with the continuing education audits, the Department needs to complete a full audit of all certified appraisers who were renewed during the 2003 and 2004 renewal cycles. This letter sets forth, in detail, the ASC's findings and necessary actions.

### **Previous Findings, Current Status, and Necessary Actions**

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

***Previous Findings:*** 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 from September 2001, through August 2004. 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 found that Minnesota failed to administer an effective complaint investigation and resolution program as required by Title XI.

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. We instructed the State to take the necessary actions to comply with ASC Policy Statement 10. Additionally, the Department was instructed 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 might need to contract for outside expertise or provide adequate training to its investigators;

2. Inform us of how the Department planned to reduce the backlog of outstanding complaint cases and how the Department planned to manage ongoing complaint investigation and resolution in a timely manner; and
3. Provide a complaint log to the ASC quarterly to allow the ASC to monitor the Department's progress in this area.

***Current Status:***

The following table shows that, at the time of the June 2005 follow-up review, the number of complaints outstanding and complaints outstanding for more than one year increased.

<b>Field Review or Follow-up Review</b>	<b>Complaints outstanding</b>	<b>Complaints outstanding more than 1 year</b>
August 2004	76	31
May 2005	93*	60

\* The 93 outstanding complaints do not include 91 outstanding complaints stemming from the continuing education audit process, which is discussed in the next section of this report. Minnesota's investigation unit focused its efforts on resolving the audit-related complaints, causing the number of aged cases to almost double. At the same time, the number of outstanding complaints, not including those from the audit process, increased approximately 22%. Because of changes in the Department's investigation unit, which are discussed immediately below, Department staff was confident that complaints would be processed more efficiently and effectively, and that the backlog of outstanding complaints would be reduced.

Following our 2004 field review letter, the Department contracted with an outside appraisal education company to teach six modules of customized classroom appraisal education to the six investigators and their supervisor. Also, the Department now requires investigators to complete a status sheet on all complaints outstanding more than one year and to meet with the investigation supervisor to discuss each case. This practice also has been put in place for complaints that have been in process approaching one year.

While the Department appears to be taking appropriate steps to eliminate the case backlog, it is too early to determine whether these steps will prove effective. At our next field review, planned for spring 2006, we will review the complaint investigation and resolution process and determine the effectiveness of the new procedures and training.

***Necessary Action:*** The Department needs to continue its efforts to reduce the backlog of outstanding cases. Please continue providing a complaint log to the ASC quarterly for our monitoring purposes.

- **The Department does not have a reliable means of validating continuing education claims of appraisers applying to renew certified credentials.**

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

To address this concern, the Department was instructed to:

1. Prepare a listing of all certified appraisers whose credentials were renewed during the August 2003 and 2004 renewal cycles;
1. By December 31, 2004, audit the continuing education claims of at least ten percent of the appraisers identified in step 1;
2. Identify appraisers who fail to conform to Appraiser Qualifications Board ("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
3. Modify its acceptance of continuing education affidavits to comply with ASC Policy Statement 10, which becomes effective January 1, 2005.

**Current Status:** In June 2005, rather than December 2004, the Department completed an audit of the continuing education claims of 200 appraisers whose credentials were renewed during the August 2003 renewal cycle (158 of whom were certified appraisers) and 236 for the 2004 renewal cycle (192 of whom were certified appraisers). The State audited approximately 10% of all renewing appraisers (registered, licensed, certified residential, and certified general). Sixty-six appraisers failed the audits (*i.e.*, were unable to support their affidavits or failed to respond).

As directed in our October 2004 field review letter, the Department audited a representative sample of renewing appraisers from 2003 and 2004. While the Department took disciplinary action in several instances, it did not take appropriate disciplinary action in all cases. At least 20 appraisers took courses that had been disapproved by the Department or had not been submitted to the Department for approval. The Department, however, allowed continuing education credit for these courses and did not take disciplinary action against the appraisers. The Department took this approach despite the fact that the Department maintains a listing of approved courses that appraisers should reference before scheduling continuing education courses.

It is unacceptable for the State to award continuing education credit to certified appraisers for courses that do not meet AQB criteria. Specifically, Minnesota cannot award credit for the courses that the Department had previously reviewed and found unacceptable, or for real estate-related courses that do not meet appraiser criteria.

We recognize that the severity of a State's disciplinary sanctions will vary depending on each case's circumstances. In our January 26, 2005 letter responding to the Department's response to our field review letter, we discussed the fact that when appraisers misrepresent their

continuing education credits, the State has a duty to determine whether those misrepresentations were fraudulent or were the result of misunderstandings or good faith mistakes. Appraisers who knowingly misrepresent their continuing education hours commit fraud, which calls into serious question their professional ethics. A State must deal more severely with those appraisers. An appraiser who takes a State-disapproved course and attempts to claim it for continuing education credit might or might not be committing a knowing misrepresentation when claiming the course for continuing education credit. That depends on the facts regarding intent. At the very least, it appears that the appraiser was negligent by failing to perform his or her duty to claim only Department-approved courses.

The Department audited 436 appraisers who renewed in 2003 and 2004. Sixty-six of those appraisers failed the audit. This represents a 15.1% failure rate. More than 2,100 certified appraisers renewed their credentials in 2003 and 2004. A 15.1% failure rate indicates that more than 300 Minnesota certified appraisers could be practicing while failing to conform to AQB criteria and Title XI requirements. Additionally, the Department's audit findings revealed that a number of appraisers claimed credit for courses that the Department had reviewed and disapproved. For these reasons, it is necessary that the Department audit all certified appraiser renewals in 2003 and 2004.

Because States are not required to enforce AQB criteria for Licensed appraisers, the Department can choose whether to audit Licensed appraisers in addition to certified appraisers. This decision will affect the data we report on the National Registry and ASC Web site. The National Registry data element "AQB Compliant" indicates whether an appraiser credential was issued in conformance with AQB criteria. If the Department does not validate its affidavit process for Licensed appraisers, we will have to report this data element as "Unknown" for Minnesota Licensed appraisers. Many users of appraisal services will not use appraisers unless the National Registry indicates that they are "AQB Compliant."

***Necessary Actions:***

1. The Department needs to perform a complete continuing education audit of all certifications issued during the 2003 and 2004 renewal cycles and complete the following actions:
  - a. By October 31, 2005, review the continuing education claims of all remaining certified appraisers whose credentials were renewed in 2003 and 2004 to determine whether their claims meet the AQB's certification criteria;
  - b. From the appraisers audited in the previous sample audit **and** those audited from step (a), identify all appraisers who do not have the necessary education to support the renewal of their certifications;
  - c. For each appraiser identified in step (b), determine whether the appraiser appeared to have fraudulently misrepresented his or her continuing education claims;
  - d. Notify those appraisers who failed the audit but did not commit a fraudulent misrepresentation that they have 60 days to take and submit the necessary continuing education;
  - e. For those appraisers identified in step (d) who fail to take the necessary continuing education within 60 days, expeditiously suspend, revoke, downgrade to a non-certified credential, or recall their existing credentials and issue new credentials with a conspicuous overstamp stating "Not eligible to appraise federally related transactions";

- f. For those appraisers who apparently committed fraud, immediately initiate disciplinary actions to suspend or revoke their certifications; and
  - g. By December 30<sup>th</sup>, provide ASC staff with updated spreadsheets of the 2003 and 2004 continuing education audits. Those spreadsheets need to indicate:
    - 1) The name and license number of each appraiser included in the audit;
    - 2) Whether the appraiser passed or failed the audit;
    - 3) For failures, whether the appraiser committed fraud;
    - 4) For failures, what disciplinary action and/or remedial action was taken; and
    - 5) The status of disciplinary/remedial action completion.
2. If the Department chooses, it can take the actions set forth in step 1 for its Licensed appraisers also. If the Department chooses not to audit its Licensed appraiser renewals, please notify ASC staff of that decision so that we can change the "AQB Compliant" field in the National Registry database and ASC Web site to "Unknown" for your Licensed appraisers.
  3. Finally, the Department needs to ensure that its continuing education affidavit procedures comply with ASC Policy Statement 10 F., which became effective January 1, 2005, when completing its next renewal cycle of August 31, 2005.
- **Minnesota's temporary practice provisions do not comply with Title XI and ASC Policy Statement 5.**

*Current Status:* The Department changed its procedures and now processes temporary practice permits within the five days allowed by ASC Policy Statement 5. Also, effective August 1, 2005, the Department's regulations allow for one easy extension of a temporary practice permit. This concern was resolved in accordance with our October 2004 field review letter.

- **Several sections of the Department's regulations are inconsistent with AQB criteria.**

*Current Status:* The Board amended its regulations to include all components of the AQB criteria regarding the 15-hour National USPAP Course and the 7-hour National USPAP Course, effective August 1, 2005. Also, the Department repealed the provisions in its regulations that allowed acceptance of teaching appraisal courses as qualifying experience, effective August 1, 2005. This concern was resolved in accordance with our October 2004 field review letter.

## **Conclusion**

Minnesota has complied with a number of the curative actions required in our October 12, 2004 field review letter. However, because the State inappropriately accepted certain continuing education claims from appraisers and apparently failed to take appropriate disciplinary action regarding those appraiser's actions, the State needs to revisit those cases and deal with them in a more appropriate fashion. In addition, because of the unacceptably high failure rate in connection with the continuing education audits, the Department needs to complete a full audit of all certified appraisers who were renewed during the 2003 and 2004 renewal cycle.

Please contact us if you have any questions.

Sincerely,

Ben Henson  
Executive Director

cc: Bonnie Polta  
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Susan Bergh  
Licensing Director