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February 14, 2002

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

FEB 15

Dear Chairman Watson:

It is my pleasure to provide this written response to your December 19, 2001 letter wherein you detail certain items requiring the Ohio Division of Real Estate & Professional Licensing's (Division) attention, which were identified in an audit of the Division's Appraisal Program in October of 2001.

Please allow me to provide you with an initial observation of the audit process and the concerns that ultimately were incorporated in your December 19th letter. Although the Division staff and I found the auditors to be exceptionally knowledgeable about requirements of the Appraisal Subcommittee (ASC) and the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Title XI), it appears the auditors left Ohio with a marked misunderstanding regarding many facets of the appraisal program itself and the Division's goals for program enhancements. I appreciate the opportunity to address these misunderstandings and to re-iterate for the Committee the commitment Ohio has to assuring that not only are the requirements of the ASC and Title XI met, but are exceeded. Accordingly, below you will find the Division's responses detailed in the same order as the Committee's concerns.

- **The complaint investigation and resolution program needs improvement in three areas:**
 - o **Investigators do not independently verify information provided by the complainants or respondents to support or refute possible violations.**

The support for this contention was based on the auditor's review of one very unusual case, captioned Superintendent v Robert Rudolph Ruckstuhl. In this case, the respondent was charged with using comparable figures that differed by millions of dollars from the actual comparable sales figures. The investigator in this case reviewed not only primary, but also secondary data sources and recommended charges against the respondent. Upon review of the case for the purpose of finding a violation and imposition of discipline, the Ohio Real Estate Appraiser Board (Board) found the respondent in violation of license law and revoked the respondent's license. Unfortunately, a County Court of Appeals reversed the Board's order, finding that the respondent utilized comparable figures from a primary data source, the county recorder's office, and therefore it was reasonable for the respondent to rely on such figures. In reviewing the court's entry in this case the Division was advised by the Ohio Attorney General's Office that the case was not appropriate for appeal.

Although neither the Division nor the Board were happy with the outcome in Ruckstuhl the Division is continuing its efforts to provide Division investigators with every technological and training tool necessary to effectively investigate complaints. In July of 2000, investigators were given access to PaceNet, a subscriber only online appraisal database used by many appraisers as a research tool. Additionally, investigators have access to Internet sites that contain online county property records and tax information for all of Ohio's most populous counties.

- o **Investigative Reports and "Notices of Hearing" do not always cite apparent violations of the Uniform Standards of Professional Appraisal Practice.**

Although an independent review of the appraisal enforcement cases that have been closed in the last three years indicates that well over 90% of the Division's "Notices of Hearing" incorporate at least one violation of USPAP, the Division recognizes that the Division's enforcement attorney review may have reduced the quantity of USPAP violations a respondent was charged with. Additionally, subsequent review by the Assistant Attorney General assigned the case may reject certain charges for lack of evidence or inability to subpoena needed witnesses. The Committee will be pleased to know that since November of 2001, every USPAP violation identified by an investigator is included in the "Notice of Hearing", and there is no longer any filtering of possible charges by the Division's enforcement attorney. This change has re-focused the charging process on the expertise and recommendations of the investigator. However, rejection of certain charges by the Assistant Attorney General remains a possibility that is outside of the Division's control.

- o **The Division does not have established procedures for notifying the Board of past disciplinary actions against appraisers.**

As discussed with the auditors and later with a legal counsel of ASC, pursuant to the Attorney General's Office interpretation of Ohio law, the Division can only make information about prior discipline available to the Board after the Board makes a finding that a violation has occurred. When the Board enters the penalty phase of the case review, the Division does make any of the respondent's disciplinary history available to the Board. Additionally, the Board is instructed by a sitting Assistant Attorney General to only consider such information in evaluation of the severity of the discipline to be imposed.

- **The Division's temporary practice provisions do not conform to ASC policy statement five.**

This observation is based on a provision of Ohio law that provides for the issuance of a temporary practice permit on a per property basis rather than a per assignment basis. As communicated to the auditors in October, the Division has agreed to support a legislative change to allow for the issuance of temporary practice permits on a per assignment basis. This change was included in draft legislation contemplated by the industry in 2000 and is included in the Division's 2002 list of legislative priorities and will be included in any future appraiser related legislation sponsored by the Division. It is the Division's hope that the Committee appreciates that a legislative change such as this is ultimately subject to factors beyond the Division's control, such as review by the Ohio legislature and Ohio Governor.

- **The Division does not maintain documentation to support its decisions regarding appraiser continuing education provider and course approval and some courses are not consistent with Appraisal Qualifications Board (AQB) criteria.**

Unfortunately, there appears to be a misunderstanding by the auditors as to what files the Division maintains and what files are destroyed. The Division has a records retention protocol that has been in place since the program's inception. This protocol calls for the Division to maintain all documentation to support its decision to approve a continuing education course or provider for a four year period or the completion of an ASC audit, whichever occurs first.

The Division's Education and Testing Supervisor has indicated that the auditors never requested to review any of these applications during the field audit. Consequently, it is easy to understand why the auditors would identify a list of course titles that are questionable, because the auditors never reviewed the accompanying applications. As a courtesy, I have taken the liberty of enclosing the course applications and supplemental materials for the courses outlined as questionable. It remains the Division's position that the outlined courses are compliant with the requirements of AQB. Upon review of the course outlines, should the Committee find otherwise, the Division would appreciate being advised as such.

Conversely, the Division maintains for only ninety days applications for continuing education courses or providers that are rejected. As noted above, this has been the records retention protocol since the appraisal program's inception and has never been highlighted as a concern in previous audits of the program. In the interest of providing whatever information is necessary for the auditors to conduct a satisfactory field review, the Division implemented changes to the records retention protocol to provide for the same level of retention of rejected applications as for approved applications.

- **The Division has not yet begun to address the 2003 AQB changes.**

Because the 2003 AQB changes have been the subject of lengthy review, at the time of the field audit, the Division had yet to receive definitive notice from the ASC to implement these changes. As communicated to the auditors, the Division will take the necessary steps to implement these changes prior to January 1, 2003. Division legal counsel has identified only one administrative rule that must be amended to provide for implementation of the changes. The rulemaking process is expected to begin later this month and will be completed by early May 2002.

- **Ohio does not use the ASC website to assist in quicker processing temporary practice and reciprocal applications.**

To date, the Division has not used the ASC website to assist with verification of licensure in another jurisdiction because the information available on the ASC website is not always accurate. For example, the Division has documented cases of Ohio's own licensees not being reflected accurately in the database. In 2001, the Division did experience a delay in the issuance of temporary practice permits, however this delay is attributable to a comprehensive computer conversion, not the solicitation of licensure verification from other jurisdictions. Since a verification of licensure routinely accompanies temporary practice applications, the Division is able to consistently issue temporary practice permits within 7 days of the receipt of the application.

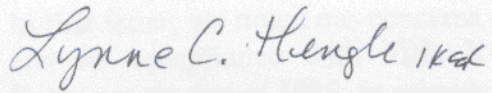
The same is true for the processing of reciprocal applications, however there may be a delay resulting from the applicants failure to submit proof of additional pre-licensing education, mandated by Ohio law. This education, a three-hour course in Federal State and Municipal Fair Housing, is rarely completed by the applicant prior to submitting a request for a reciprocal license. Consequently, application approval is delayed until the applicant submits to the Division proof of completion of this required course.

'Chairman Thomas E. Watson, Jr.
Appraisal Subcommittee
February 13, 2002
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I believe that the forgoing has comprehensively addressed any concerns the committee may have regarding Ohio's appraisal program, resulting from the ASC October 2001 field audit. The Division welcomes the opportunity to meet with the ASC auditors in 18 months, so that any perceived deficiencies are thoroughly addressed. May I respectfully recommend that the Committee encourage the auditors to communicate with the Division any areas of concern that arise during their visit, so that future misunderstandings may be avoided and required information may be promptly provided to the auditors.

Once again, I appreciate the opportunity to continue work with ASC to further enhance what I believe to be a first rate appraisal program.

Sincerely,

A handwritten signature in cursive script that reads "Lynne C. Hengle". To the right of the signature, there are initials "LKH" written in a smaller, less legible script.

LYNNE C. HENGLE
Superintendent

Enclosures

CC: Syliva Keberle, Appraisal Program Administrator (w/o enclosures)
Robert J. Weiler, President, Ohio Real Estate Appraiser Board (w/o enclosures)