

Appraisal Subcommittee

Federal Financial Institutions Examination Council

March 14, 2012

Ms. Jennifer McGinnis, Chair
Board of Real Estate Appraisers
Department of Labor and Industry,
Business Standards Division
301 S. Park, 4th Floor
Helena, MT 59620-0513

RE: ASC Compliance Review of Montana's appraiser regulatory program

Dear Ms. McGinnis:

The Appraisal Subcommittee (ASC) staff conducted an ASC Compliance Review (Review) of Montana's appraiser regulatory program (Program) on June 14-16, 2011. This is the final ASC Compliance Review Report (Report) on that Review.

The ASC has considered the preliminary findings regarding the Review and the State's response. The ASC has determined the Program is not in substantial compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended. The ASC identified the following areas of non-compliance:

- States should resolve all complaints filed against appraisers within one year, except for special documented circumstances;¹
- Enforcement dispositions must be consistent, appropriate and equitable;² and
- States must regulate, supervise and discipline their certified and/or licensed appraisers.³

In its response, the State indicated corrective actions were taken. During the next Review, ASC staff will confirm these corrective actions have taken place and are appropriate. Montana will remain on a one-year Review Cycle to allow for close monitoring of its Program to ensure it brings its enforcement Program into compliance. Please also be advised this letter and the attached Report are public record and available on the ASC website in accordance with the Freedom of Information Act.

Please contact us if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Gillispie". The signature is fluid and cursive, with a large initial "P" and a long, sweeping underline.

Peter Gillispie
Acting Chairman

Attachment

cc: Mr. Jack Kane, Division Administrator
Ms. Jeannie Worsch, Bureau Chief
Ms. Becky Zaharko, Program Manager
Mr. Dave Schrim, Bureau Chief of Hearings
Ms. Darcee Moe, Legal Counsel

¹ Title XI § 1118 (a), 12 U.S.C. 3347; ASC Policy Statement 10E.

² Title XI § 1118 (a), 12 U.S.C. 3347; ASC Policy Statement 10E.

³ Title XI § 1118 (a), 12 U.S.C. 3347; ASC Policy Statement 10A.

ASC Compliance Review Report

ASC Finding: Not In Substantial Compliance

Final Report Issue Date: March 14, 2012

Montana Appraiser Regulatory Program (Program)

Board of Real Estate Appraisers
(Board) / Decision Making

PM: J. Tidwell

ASC Compliance Review Date: June 14-16, 2011

Review Period: September 2009 to June 2011

Umbrella Agency: Department of Labor and Industry, Business Standards Division (Division)

Number of State Credentialed Appraisers on National Registry: 410

Review Cycle: One Year

Requirement/Guidance	Compliance (YES/NO) Areas of Concern (AC)			ASC Staff Observations	State Response	Required State Actions	Recommended State Actions	General Comments
	YES	NO	AC					
Statutes, Regulations, Policies and Procedures:	X			No compliance issues noted.	N/A	None	None	None
Temporary Practice:			X	ASC staff reviewed two temporary practice permit applications that took Montana 45 and 54 days to issue. In both cases, the process was delayed awaiting approval by the full Board. Board approval was required because the applicants indicated that a prior complaint had been filed against them, which Montana's application form requires applicants to disclose. In such cases, staff is not authorized to process the application without Board approval, even though, as was the case with these two applicants, the complaints were dismissed with no disciplinary action, and the applicants were in good standing.	In a letter dated October 26, 2011, the Board reported to ASC staff that it conducted a legal review of the statutes and rules to determine whether the process could be streamlined under existing law. As a result, on August 18, 2011, the Board authorized its staff to begin issuing temporary practice permits to those qualified under Montana Code Annotated section 37-54-212 following a check of the National Registry to verify the applicant's credentials and status in other States. The Board reported to ASC staff that this change in process has virtually eliminated the delay in processing requests for permits. Since the Board adopted this policy, 17 permits have been issued with an average processing time under 1.5 days.	None	None	During the next Review on March 5-7, 2012, ASC staff will pay particular attention to this area for compliance with Title XI and ASC Policy Statement 5.
National Registry:	X			No compliance issues noted.	N/A	None	None	None
Application Process:	X			No compliance issues noted.	N/A	None	None	None
Reciprocity:	X			No compliance issues noted.	N/A	None	None	None

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	YES	NO	AC					
Education:	X							
				No compliance issues noted.	N/A	None	None	None
Enforcement:		X						
States should resolve all complaints filed against appraisers within one year, except for special documented circumstances. (Title XI § 1118 (a), 12 U.S.C. 3347; ASC Policy Statement 10E.)				Montana had 57 outstanding complaints of which 15 were unresolved for more than one year. There were no cases that fall under the exception for special documented circumstances. Therefore, of the 57 outstanding complaints, 15 (26%) were not resolved in accordance with ASC Policy Statement 10E. Of those 15 cases, 11 were in various stages of the disciplinary process, and 4 were still under investigation.	In a letter dated October 26, 2011, the Board reported to ASC staff how it plans to bring their enforcement program into compliance: * implement a new database system for better tracking of case status; * schedule Screening Panel meetings at least every 45 days when needed; * schedule additional Adjudication Panel meetings when needed; * reduce the workload of the investigator by minimizing her responsibilities outside of her investigating and auditing functions; * contract out appraisal reviews and investigations to help out the investigator; * work with the Hearing Bureau to get real estate appraiser cases scheduled as a priority; and * improve record keeping with respect to requests for extensions and continuances to document the special circumstances which caused the delay.	The Board must monitor their newly implemented enforcement incentives to ensure that it brings their program into compliance with Title XI and ASC Policy Statement 10E.	None	Through off-site monitoring and during the next Review in March 2012, ASC staff will pay particular attention to this area to determine if there is an improvement in Montana's enforcement program as a result of the changes made to its complaint investigation and resolution process.

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	YES	NO	AC					
Enforcement continued:			X					
States must appropriately document enforcement files and include rationale. (Title XI § 1118 (a), 12 U.S.C. 3347; ASC Policy Statement 10E.)				Dismissed complaints did not contain sufficient documentation to support the rationale for dismissal. Furthermore, there was no indication that the appraisals in question were reviewed for USPAP compliance.	In a letter dated October 26, 2011, the Board reported to ASC staff that appraisal complaints have always been reviewed for USPAP violations regardless of what the complaint was about. However, the Board has increased its documentation of these efforts. In each case involving an appraisal, Screening Panel members will be asked specifically whether they reviewed the appraisals and found any USPAP violations. Panel members' answers will be documented in the minutes. In addition, the meeting minutes have been adjusted to include more rationale as to why complaints are dismissed, and a copy of the section of minutes pertaining to the dismissed complaint will be placed in the complaint file.	None	None	During the next Review in March 2012, ASC staff will pay particular attention to this area for compliance with Title XI and ASC Policy Statement 10E.
Enforcement continued:		X						
Enforcement dispositions must be consistent, appropriate and equitable. (Title XI § 1118 (a), 12 U.S.C. 3347; ASC Policy Statement 10E.)				Complaints were filed against appraisers for failure to provide proof of completed continuing education (CE), but were not processed consistently. All complaints were addressed by either dismissal or dismissal with a non-disciplinary letter of instruction once the appraiser provided proof of having completed the delinquent CE. Complaints with similar aggravating or mitigating circumstances were not processed in the same manner.	In a letter dated October 26, 2011, the Board reported to ASC staff that Department Counsel, in collaboration with the Board, is working on a penalty matrix to help the Board make more consistent decisions in their enforcement actions. The penalty matrix will list frequently encountered aggravating and mitigating circumstances. The Board will increase its efforts to train and remind board members regarding their duties to enforce Title XI.	The Board must submit a copy of the penalty matrix to ASC staff within 60 days of the issuance of this Report.	None	During the next Review in March 2012, ASC staff will pay particular attention to this area for compliance with Title XI and ASC Policy Statement 10E.

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	YES	NO	AC					
Enforcement continued:		X						
States must regulate, supervise and discipline their certified and/or licensed appraisers. (Title XI § 1118 (a), 12 U.S.C. 3347; ASC Policy Statement 10A.)				<p>ASC staff reviewed all complaints in which the renewing appraiser did not provide proof of having taken CE in compliance with AQB Criteria. All complaints were disposed of by either dismissal or dismissal with a non-disciplinary letter of instruction once the appraiser provided proof of having completed the delinquent CE. Renewing appraisers declare and attest to the completion of required CE. A false statement may lead to subsequent revocation of licensure on ethical grounds. However, the Board has not taken disciplinary action regarding CE non-compliance since 2004. In 2004, the Board fined a non-compliant renewing appraiser \$500.</p> <p>The decision to dismiss these cases without disciplinary action was taken by the Screening Panel against the advice of Board Counsel. The Chief Counsel of the Department wrote a letter to the Board dated November 15, 2010, stating that the Board's decision to dismiss complaints against licensees who failed to comply with CE requirements is contrary to Board rules. The letter urged the Panel to reconsider the dismissals and reverse any decision that allowed individuals to maintain licensure in violation of AQB Criteria and Board rules without facing disciplinary action for noncompliance. The Screening Panel reconsidered 14 complaints as a result of this letter and either upheld the dismissal or dismissed with a non-disciplinary letter of instruction. On one disciplinary action, the Board imposed a \$300 fine for lack of a timely response to a Board request for proof of CE compliance, even though the appraiser was found to be compliant.</p>	<p>In a letter dated October 26, 2011, the Board reported to ASC staff that in all cases where required CE was not completed in accordance with the law, or a response to the audit was not received, the Board will discipline the licensees and report them as non AQB-compliant on the National Registry until such time as their CE meets minimum standards. To date, the Board has fined two appraisers \$300 for not having their education completed on time. The Board has sent a Notice of Proposed Disciplinary Action to several more appraisers who did not respond to the audit.</p>	<p>See Required State Action above.</p>	<p>None</p>	<p>During the next Review in March 2012, ASC staff will pay particular attention to this area for compliance with Title XI and ASC Policy Statement 10A.</p>