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Appraisal Subcommittee

Federal Financial Institutions Examination Council

June 13, 2012

Mr. Ken Lawson, Secretary
Department of Business & Professional Regulation
1940 North Monroe Street
Tallahassee, FL 32399

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

Dear Secretary Lawson:

The Appraisal Subcommittee (ASC) staff conducted an ASC Compliance Review (Review) of the Florida appraiser regulatory program (Program) on December 5-9, 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 must have sufficient funding and staffing consistent with the purpose of Title XI;¹
- States must use a reliable means of validating appraiser experience claims on all initial applications for appraiser credentialing;²
- States should resolve all complaints filed against appraisers within one year, except for special documented circumstances.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. Florida will be moved to a one-year Review Cycle.

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,


Peter Gillispie
Chairman

Attachment

cc: Ms. Juana Watkins, Real Estate Director
Ms. Fran Oreto, Board Chair

¹ Title XI § 1118 (a), 12 U.S.C 3347

² Title XI § 1116 (a), 12 U.S.C. 3345; Title XI § 1118 (a), 12 U.S.C. 3347; AQB Real Property Appraiser Qualification Criteria; ASC Policy Statement 10G

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

ASC Compliance Review Report

ASC Finding: Not In Substantial Compliance
Final Report Issue Date: June 13, 2012

Florida Appraiser Regulatory Program (Program)

Florida Real Estate Appraisal Board (Board) / Decision Making	PM: V. Metcalf	ASC Compliance Review Date: December 5-9, 2011	Review Period: December 2009 to December 2011
Umbrella Agency: Department of Business and Professional Regulation (Department), Division of Real Estate (Division)		Number of State Credentialed Appraisers on National Registry: 7058	Review Cycle: One Year

Requirement/Guidance	Compliance (YES/NO)			ASC Staff Observations	State Response	Required State Actions	Recommended State Actions	General Comments
	YES	NO	AC					
Florida Statutes, Regulations, Policies and Procedures:	X							
States must require that appraisals be performed in accordance with the latest version of the Uniform Standards of Professional Appraisal Practice (USPAP). (Title XI § 1116 (a), 12 U.S.C. 3345; Title XI § 1118 (a), 12 U.S.C. 3347; ASC Policy Statement 3; AQB Real Property Appraiser Qualification Criteria.)				<p>The Board and Department legal staff are prohibited from citing the current version of the Uniform Standards of Professional Appraisal Practice (USPAP) in enforcement cases. Recent case law interpreting a provision within the Florida Constitution disallowed incorporation by reference to the most current version of USPAP, and held that the USPAP version in place at the time the statute was enacted, i.e. 1991, is the version recognized by State statute.</p> <p>As an alternative to citing the outdated version of USPAP, and in an effort to uphold the spirit of USPAP, the Board and Department legal staff use two general statutory disciplinary provisions as the basis for enforcement. Those statutory provisions include fraud, misrepresentation, concealment, false promises, false pretenses, dishonest conduct, culpable negligence, or breach of trust in any business transaction, as well as failure or refusal to exercise reasonable diligence in developing an appraisal or preparing an appraisal report. Department prosecutors stated that prosecutions based on specific USPAP provisions would be more effective. Efforts by the Board and Department staff to encourage adoption of corrective statutory provisions have not been successful.</p>	Effective January 31, 2012, Florida amended §61J1-6.001 of its administrative code to adopt the 2012-2013 USPAP. The Department's General Counsel has also instructed the attorneys to begin charging USPAP violations where supported by law. The Department continues to aggressively pursue the legislative solution to ultimately secure the right to charge USPAP violations. Its latest effort is part of Florida House Bill 517.	None	None	The Department's resolution addresses the concern.

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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					
Florida Statutes, Regulations, Policies and Procedures continued:			X					
States must have sufficient funding and staffing consistent with the purpose of Title XI. (Title XI § 1118 (a), 12 U.S.C. 3347.)				Former Board members participate on the appraisal enforcement probable cause panel which determines if there is merit to a complaint and if the complaint should be heard by the Board. A lack of member appointments to the Board over recent years created a shortage of probable cause panel members. As a result two current board members were assigned to the probable cause panel. This increases the risk of potential delays in complaint resolution because the members must recuse themselves from deliberation of cases, resulting in a potential lack of a quorum.	In a letter dated March 5, 2012, the Department Secretary reported to ASC staff that the Department is working with the Executive Office of the Governor to secure the two appointments needed to complete the Board's membership.	None	To strengthen the Program, the Board and Department should continue to monitor the appointment process and encourage the appointment of members to the vacant positions.	During the next Review in one year ASC staff will pay particular attention to this area for compliance with Title XI.
Florida Statutes, Regulations, Policies and Procedures continued:		X						
States must have sufficient funding and staffing consistent with the purpose of Title XI. (Title XI § 1118 (a), 12 U.S.C 3347.)				Florida does not have sufficient resources to support the enforcement program (discussed in more detail below). The Department cut two enforcement positions during the fiscal year 2011 as a result of the budget deficit. The Board's September 13, 2011 board meeting minutes state that "Florida's appraisal program is hindered by the lack of enforcement staff." In addition, effective July 1, 2011, the Board began implementing Appraisal Management Company (AMC) regulations with no additional staffing to support the administration and enforcement of this new program.	In a letter dated March 5, 2012, the Department Secretary reported to ASC staff that discussions have taken place to identify ways to fulfill regulatory responsibilities more efficiently without compromising effectiveness. In addition, the Department will measure the processes to ensure the maximum use of resources. Department staff will closely monitor the impact to the Program of changes like the National Hotline, AMC regulation, and mandatory reporting by lending institutions in assessing staffing needs.	The Department, Board and Office of the Attorney General must find ways to achieve and maintain the necessary resources to perform its Title XI-related duties.	None	During the next Review in one year ASC staff will pay particular attention to this area for compliance with Title XI.
Temporary Practice:	X			No compliance issues noted.	N/A	None	None	None

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Requirement/Guidance	Compliance (YES/NO)			ASC Staff Observations	State Response	Required State Actions	Recommended State Actions	General Comments
	Areas of Concern (AC)							
	YES	NO	AC					
National Registry:	X			No compliance issues noted.	N/A	None	None	None
Application Process:		X		Florida did not have a reliable means of determining whether work product submitted by appraiser applicants was USPAP-compliant as required by the Appraiser Qualification Board's Real Property Appraiser Qualification Criteria (AQB Criteria) and ASC Policy Statement 10G. Board staff, with no USPAP or appraisal expertise, analyze applicant work samples using a check list. This process is not an appropriate assessment of whether or not the applicant developed and communicated their analysis, opinions, and conclusions in a manner that is USPAP-compliant.	In a letter dated March 5, 2012, the Department Secretary reported to ASC staff that Division staff will be attending a 15-hour National USPAP course in April. This training will better equip staff to conduct experience reviews of the sample reports in accordance with the established written guidelines provided.	The Department must find ways to educate staff and/or provide input from an individual knowledgeable in USPAP to determine whether work product submitted by appraiser applicants is USPAP-compliant.	None	During the next Review in one year ASC staff will pay particular attention to this area for compliance with Title XI and AQB Criteria.
Reciprocity:	X			No compliance issues noted.	N/A	None	None	None

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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					
Education:			X					
States should ensure that course approval expiration dates assigned by the State coincide with course approval expiration dates assigned by AQB's CAP and/or IDECC. (Title XI § 1118 (a), 12 U.S.C. 3347; AQB Real Property Appraiser Qualification Criteria.)				Course approval expiration dates assigned by the State were found to be in conflict with International Distance Education Certification Center (IDECC) endorsement periods. As a result, ASC staff found a number of distance education courses on Florida's list of approved courses that no longer have IDECC approval or IDECC approval will expire prior to the expiration date assigned by the State.	In a letter dated March 5, 2012, the Department Secretary reported to ASC staff that the Department will reassess business processes to verify CAP, IDECC, and AQB approval as part of the initial application and renewal process. In addition the Bureau of Education and Testing (BET) identified the affected courses and verified that no students took a course under an expired IDECC certification.	None	To strengthen the Program, Florida should continue to ensure that all course files contain sufficient documentation to support that course approval expiration dates assigned by the State do not conflict with IDECC endorsement periods.	During the next Review in one year ASC staff will pay particular attention to this area for compliance with AQB Criteria.
Education continued:			X					
States must maintain sufficient documentation to support that approved appraiser courses conform to AQB Real Property Appraiser Qualification Criteria. (Title XI § 1116 (a), 12 U.S.C. 3345; Title XI § 1118 (a), 12 U.S.C. 3347; AQB Real Property Appraiser Qualification Criteria; ASC Policy Statement 10F.)				Based on review of the education files and discussions with Department staff, ASC staff determined that no one is verifying that appraiser education courses being renewed meet AQB Criteria. ASC staff also found approved 15-hour National USPAP and 7-hour National USPAP Update courses where the State failed to confirm the instructors were both AQB Certified USPAP instructors and State Certified appraisers.	In a letter dated March 5, 2012, the Department Secretary reported to ASC staff that the Department analyzed the method employed to determine AQB Instructor certification. BET verified the AQB and State certifications of USPAP instructors for approved USPAP courses. BET also determined that no students were granted credit for USPAP courses taught by instructors who lacked AQB and/or State certification. In addition, the Department and BET will ensure processes verify proper instructor certification as part of the initial and renewal application processes.	None	To strengthen the Program, Florida should continue to ensure that all course files contain sufficient documentation to support that USPAP instructors are both certified USPAP instructors and State certified appraisers.	During the next Review in one year ASC staff will pay particular attention to this area for compliance with AQB Criteria.

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Education continued:	X							
The Appraisal Subcommittee shall encourage the States to accept courses approved by the Appraiser Qualifications Board's Course Approval Program. (Title XI § 1122 (h), 12 U.S.C. 3351.)				Florida does not recognize AQB Course Approval Program (CAP) approved courses. All potential course providers must submit an application and course materials to the Program for review. A contract course reviewer performs an independent evaluation of the course documents without consideration of the CAP approval documentation available on the Appraisal Foundation's website.	In a letter dated March 5, 2012, the Department Secretary reported to ASC staff that the Division and BET will learn more about the CAP program with the goal of recommending that the Florida Board approve CAP courses without the need of further review.	None	In accordance with Title XI § 1122(h) the ASC encourages Florida to accept courses approved by the AQB's CAP Program.	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.)				Florida had 415 outstanding complaints at the time of the Review. Of those 415 complaints, 101 were unresolved for more than one year. Of those 101, four fall under the exception for special documented circumstances. Therefore, 97 (23%) complaints were unresolved for more than one year. Furthermore, 18 of the 97 cases were against one respondent and have been assigned to an expert reviewer for over one year.	In a letter dated March 5, 2012, the Department Secretary reported to ASC staff that overall, the number of outstanding cases is down 31%, while the number of cases over one year old is down by 55% with only 97 cases in process in excess of 365 days. By March 8th, approximately 22 of the identified aged cases will be resolved. In addition, the Department will aggressively work to resolve the remaining aged cases and will closely monitor the length of time cases remain in each stage of the process.	Florida must continue to submit quarterly complaint logs to ASC staff. Staff will analyze each log. If progress is not made, the ASC may place additional requirements upon the State.	To strengthen the Program, Florida should continue to explore ways to process complaints of appraiser misconduct or wrongdoing in a timely manner to ensure compliance with ASC Policy Statement 10E.	Through off-site monitoring and during the next Review in one year ASC staff will pay particular attention to this area for compliance with ASC Policy Statement 10E.