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# Appraisal Subcommittee

*Federal Financial Institutions Examination Council*

May 21, 2010

Mr. Kraig Kosena, Chair  
Board of Real Estate Appraisers  
Department of Labor and Industry, Business  
Standards Division  
301 S. Park, 4<sup>th</sup> Floor  
Helena, MT 59620-0513

Dear Mr. Kosena:

The Appraisal Subcommittee (ASC) staff conducted an ASC Compliance Review (Review) of Montana's appraiser regulatory program (Program) on September 15-16, 2009. This is the final ASC Compliance Review Report (Report) on that Review.

The ASC has considered the staff's 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 (Title XI). The ASC identified the following concerns. Montana must:

- adopt and/or implement all relevant AQB Real Property Appraiser Qualification Criteria;<sup>1</sup>
- use a reliable means of validating continuing education affidavits used by appraisers to support credential renewals;<sup>2</sup>
- use a reliable means of validating appraisal experience claims on all initial applications;<sup>3</sup>
- maintain adequate documentation to support its validation method or methods;<sup>4</sup>
- resolve all complaints filed against appraisers within one year, except for special documented circumstances; and<sup>5</sup>
- maintain relevant documentation in the processing of complaints to enable the ASC staff to understand the facts and determinations in the matter and the reasons for those determinations.<sup>6</sup>

The State's response indicated it has taken corrective actions, which are detailed in the attached Report. During the next Review, ASC staff will confirm these corrective actions have taken place and are appropriate. 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,



Deborah S. Merkle  
Chairman

Attachment

cc: Ms. Grace Berger, Executive Officer  
Ms. Barb McAlmond, Program Manager  
Mr. Dave Scrimm, Hearings Bureau Chief

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<sup>1</sup> Title XI § 1116 (a), 12 U.S.C. 3345; Title XI § 1118 (a), 12 U.S.C. 3347; AQB Real Property Appraiser Qualification Criteria.

<sup>2</sup> Title XI, SEC. 1118 (a), 12 U.S.C. 3347; ASC Policy Statement 10F.

<sup>3</sup> 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

<sup>4</sup> Title XI § 1118 (a), 12 U.S.C. 3347; ASC Policy Statement 10G

<sup>5</sup> Title XI § 1118 (a), 12 U.S.C. 3347; ASC Policy Statement 10E.

<sup>6</sup> Title XI § 1118 (a), 12 U.S.C. 3347; ASC Policy Statement 10E.

**ASC Compliance Review Report**

Finding: Not In Substantial Compliance

Report Issue Date: May 21, 2010

**Montana Appraiser Regulatory Program (Program)**

**Board of Real Estate Appraisers (Board)**

ASC Compliance Review (Review) Date: September 15 - 16, 2009

Review Period: March 2007 - September 2009

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

PM: J. Tidwell

Number of State credentialed appraisers on National Registry: 424

Issue: FINAL

Requirement/Guidance	Compliance (YES/NO) Areas of Concern			ASC Staff Observations	State Response	Required State Actions	Recommended State Actions	General Comments
	YES	NO	AC					
<b>Montana Statutes, Regulations, Policies and Procedures:</b>		X						
States must adopt and/or implement all relevant 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.)				A review of the State's administrative rules revealed they are not compliant with the Appraiser Qualifications Board Real Property Appraiser Qualification Criteria (AQB Criteria) and require revision as follows: (1) <b>Rule 24.207.504 (7)</b> currently only requires "a minimum of 90" rather than 100% course completion for credit; (2) <b>Rule 24.207.509 (5) (d)</b> does not adequately address AQB requirements for inclusion of scope of the review and supervision of the supervising appraiser on experience logs; (3) <b>Rule 24.207.518 (1) (h)</b> is not consistent with USPAP's Competency Rule regarding the supervising appraiser's determination of trainee competence; and (4) <b>Rule 24.207.2101 (4)</b> does not limit continuing education credit for participation other than as a student to 50%.	On April 9, 2010, the Board informed ASC staff that they initiated a rule review and rewrite at the December 2009 Board meeting. The Board included a copy of the rulemaking policy and procedure manual that outlines the steps of the rulemaking process.	The State must amend the cited rules to conform to Title XI and the AQB Real Property Appraiser Qualification and Criteria (AQB Criteria).	None	Upon adoption, please provide ASC staff with copies of the adopted regulation changes.
<b>Temporary Practice:</b>	X			No compliance issues noted.	N/A	None	None	None
<b>National Registry:</b>	X			ASC staff determined that the Board had not reported all disciplinary actions for inclusion on the National Registry.	On April 9, 2010, the Board reported to ASC staff that all missing disciplinary actions were identified and recently reported to the ASC for inclusion on the National Registry. Board staff also set up a procedure to forward all disciplinary actions to the ASC immediately following every adjudication panel meeting.	None	None	During the next Review, ASC staff will pay particular attention to this area to ensure compliance with Title XI and ASC Policy Statement 9A.

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Report Issue Date: May 21, 2010

<b>Montana Appraiser Regulatory Program (Program)</b>		<b>ASC Compliance Review (Review) Date: September 15 - 16, 2009</b>		<b>Review Period: March 2007 - September 2009</b>	
<b>Board of Real Estate Appraisers (Board)</b>		<b>PM: J. Tidwell</b>		<b>Issue: FINAL</b>	
<b>Umbrella Agency: Department of Labor and Industry, Business Standards Division (Division)</b>		<b>Number of State credentialed appraisers on National Registry: 424</b>			

Requirement/Guidance	Compliance (YES/NO) Areas of Concern			ASC Staff Observations	State Response	Required State Actions	Recommended State Actions	General Comments
	YES	NO	AC					
<b>Application Process:</b>		X						
States must use a reliable means of validating continuing education affidavits used by appraisers to support credential renewals. (Title XI, SEC. 1118 (a), 12 U.S.C. 3347; ASC Policy Statement 10F.)				<p>In their 2007 Review, Montana was cited for not having a reliable means of validating continuing education (CE) affidavits used by appraisers to support credential renewal applications. As required in the April 2007 Review letter, Division staff did send CE audit letters to an appropriate percentage of renewing appraisers for the 2004 through 2009 renewal cycles. However, sufficient documentation of the results of the audit was not provided; no further action had been taken regarding appraisers that did not conform to the AQB Criteria.</p> <p>ASC staff reviewed the tabulated results provided by the Board in its response dated April 9, 2010. The results failed to specify names of individuals or details regarding the deficiencies. The results appeared to show that a total of nine persons were found to be non-compliant. No action was taken against any of these individuals for failure to comply. However, ASC staff was not provided with sufficient information or documentation to make a final determination.</p>	<p>In the response dated April 9, 2010, the Board provided tabulated results of the CE audits from 2004 through 2009. No action was taken against any individual for failure to comply. The Board reported that since the audit occurred, it determined that two of the individuals were audited in a year that was not their year to report CE; one person had been revoked for reasons other than the CE audit; one person is deceased; and two individuals credentials have expired. No action has been taken regarding the three individuals who did not comply and still hold valid credentials in Montana.</p> <p>The Board also responded that at the March 3, 2008 Board meeting, it was determined that there is no specific rule that requires credential holders to maintain their CE certificates for a specified amount of time. Therefore, the Board concluded they could not file a Board generated complaint for non-compliance. The Board is currently working on a rule to address this issue. The rule making process can take up to six months.</p>	<p>The Board must:</p> <p>(1) immediately cease accepting affidavits for CE claims until such time as it has rules, policies and procedures in place to address individuals who do not provide proof of compliance with the required CE per AQB Criteria;</p> <p>(2) complete a 100% audit of Montana's March 31, 2010 CE cycle renewals within 60 days of receipt of this letter;</p> <p>(3) provide ASC staff a tabulation of the results of the audit within 90 days of the date of this letter to include:</p> <p>(a) names of all individuals audited;</p> <p>(b) names of all individuals that did not provide proof of compliance with CE per AQB Criteria;</p> <p>(c) details of the deficiencies;</p> <p>(d) proof that all non-compliant individuals have been reported non-AQB compliant on the National Registry; and</p> <p>(e) proof that the Board notified the appraisers that are non-AQB compliant, as well as over stamped the certified credentials to indicate that they are ineligible to appraise in federally related transactions.</p> <p>Additionally, the Board must immediately place the individuals who did not provide proof of compliance with the required CE per AQB Criteria during the 2004-2009 audits as non-AQB compliant on the National Registry and notify these individuals, as well as over stamp the certified credentials to indicate that they are ineligible to appraise in federally related transactions until such time as the individuals meet AQB Criteria.</p>	None	<p>ASC staff will return for a Follow-up Review in approximately 4-6 months to review the audit files from the 2004 through 2010 renewal cycles. The following information for each of those years (in the order of your tabulated results) must be available for ASC staff review at that time:</p> <p>1) audit files of all individuals audited; and</p> <p>2) audit files of all individuals that did not provide proof of compliance with required CE per AQB Criteria.</p> <p>Based on the results of that Follow-up Review, the ASC staff will determine whether to maintain Montana on a two-year Review Cycle or move it to an accelerated one-year Review Cycle.</p>

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Requirement/Guidance	Compliance (YES/NO)			ASC Staff Observations	State Response	Required State Actions	Recommended State Actions	General Comments
	YES	NO	AC					
<b>Application Process continued:</b>		X						
States must use a reliable means of validating appraiser experience claims on all initial applications. (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.)				The experience logs submitted by applicants for certification did not contain the information required regarding scope of supervision of the supervising appraiser on each appraisal.	Following the Review, division staff revised the experience logs to include the scope of the review and supervision of the supervising appraiser. A letter and a copy of the revised log were sent to all trainees regarding this change and notifying them that all experience gained after January 1, 2008 must be submitted on the revised log.	No further action required.	None	None

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<b>Umbrella Agency: Department of Labor and Industry, Business Standards Division (Division)</b>	<b>PM: J. Tidwell</b>		

Requirement/Guidance	Compliance (YES/NO) Areas of Concern			ASC Staff Observations	State Response	Required State Actions	Recommended State Actions	General Comments
	YES	NO	AC					
<b>Application Process continued:</b>		X						
States must use a reliable means of validating appraiser experience claims on all initial applications. (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.)				<p>Montana applicants select and submit three work samples with their initial application for an appraiser credential. The Division staff investigator does a Uniform Standards of Professional Appraisal Practice (USPAP) Standard 3 review of the appraisals. Three Board members look at this review and make recommendations to the full Board. The investigator then selects and requests a minimum of two more reports from the experience log in order to verify that the experience on the log exists. Those samples are not reviewed for USPAP compliance.</p> <p>ASC Policy Statement 10G specifically states that the State agency must select the work products to be reviewed for USPAP compliance. AQB Criteria requires verification for experience claimed by the applicant shall be on forms prescribed by the State agency.</p>	<p>The Board did not address the fact that the State agency must select the work products to be reviewed for USPAP compliance in their written response. When questioned by the Policy Manager subsequent to their response, the State responded that:</p> <p>(1) Division staff chooses a minimum of two additional reports and does a USPAP Standard 3 review on at least one of them if time allows;                      (2) Board members review the additional work product; and                      (3) Board members review trainee's work product upon renewal.</p>	<p>The State must select the work products to be reviewed for USPAP compliance and maintains the documentation to support its validation methods for the ASC's review. States must exercise due diligence in determining whether submitted experience is USPAP-compliant. Montana needs to maintain information identifying each appraisal report reviewed by the State, notes, letters and/or reports prepared by the official(s) evaluating the report for USPAP compliance, and any correspondence exchanged with the applicant regarding the appraisal submitted.</p>	None	<p>During the next Review, ASC staff will pay particular attention to this area to ensure compliance with Title XI and ASC Policy Statement 10G.</p>

### ASC Compliance Review Report

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Issue: FINAL

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	YES	NO	AC					
<b>Application Process continued:</b>		X						
States need to maintain adequate documentation to support its validation method or methods. (Title XI § 1118 (a), 12 U.S.C. 3347; ASC Policy Statement 10G.)				ASC staff requested 30 application files to review for compliance; five of those (17%) could not be located.	On April 9, 2010, the Board responded that staff are in the process of scanning all licensing files, which will eliminate the possibility of misplacing files.	Montana must ensure that all documentation to support its validation methods are available to ASC staff during their Compliance Review.	None	During the next Review, ASC staff will pay particular attention to this area to ensure compliance with Title XI and ASC Policy Statement 10G.
<b>Reciprocity:</b>	X			No compliance issues noted.	N/A	None	None	None
<b>Education:</b>	X			No compliance issues noted.	N/A	None	None	None
<b>Enforcement:</b>		X		Montana had 26 outstanding complaints; of those 26 complaints, 11 were over one year old (4 were more than two years old, and 2 were more than three years old). All but two of the aged complaints had been investigated and were in the adjudicatory or hearing process. No complaints were exempted for special documented circumstances.	On April 9, 2010, the Board responded by enclosing a list of cases that are now in the legal department. The Board stated that an additional paralegal has been hired to assist with the workload of the attorneys. It was also explained that Division staff meets with the legal department before each Board meeting to review all open complaints and to ensure that processes and deadlines are being met.	Montana must submit quarterly complaint logs to ASC staff to allow monitoring of the Board's progress towards addressing this situation. If progress is not being made, the ASC may impose additional reporting requirements and/or data collection requirements.  The ASC Policy Manager assigned to Montana will work with Division staff to determine the timing and content of the complaint log.	To strengthen the Program, Montana should employ ways to process complaints of appraiser misconduct or wrongdoing on a timely basis to ensure compliance with Policy Statement 10E.	During the next Review, ASC staff will pay particular attention to this area for compliance with Title XI and ASC Policy Statement 10E.

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Requirement/Guidance	Compliance (YES/NO)			ASC Staff Observations	State Response	Required State Actions	Recommended State Actions	General Comments
	YES	NO	AC					
<b>Enforcement continued:</b>		X						
States must maintain relevant documentation to enable the ASC staff to understand the facts and determinations in the matter and the reasons for those determinations. (Title XI § 1118 (a), 12 U.S.C. 3347; ASC Policy Statement 10E.)				ASC staff requested to review 20 complaint files. Two of those (10% of the requested sample) had been destroyed according to Montana's general records retention schedule and therefore were not provided for ASC staff review.	On April 9, 2010, the Board responded to ASC staff and confirmed that effective September 16, 2009, complaint files will no longer be destroyed three years from the open date. The complaint files will be retained until three years from the closure date, at which time they will be destroyed.	None	None	During the next Review, ASC staff will pay particular attention to this area for compliance with Title XI and ASC Policy Statement 10E.