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Appraisal Subcommittee

Federal Financial Institutions Examination Council

January 28, 2011

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: Appraisal Subcommittee Staff Follow-Up Review

Dear Ms. McGinnis:

Thank you for your cooperation and your staff's assistance in the December 1-2, 2010 Appraisal Subcommittee (ASC) staff Follow-up Review. This was a Follow-up Review of the September 16, 2009 ASC Compliance Review of Montana's appraiser regulatory program (Program).

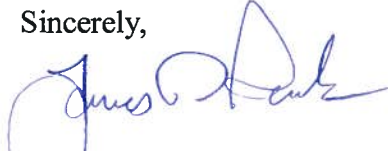
As detailed in the attached Follow-up Report, Montana has not resolved four of the concerns identified in the September 16, 2009 Compliance Review Report in which the ASC had determined the Program was not in substantial compliance with Title XI of the Financial Institutions, Reform, Recovery, and Enforcement Act of 1989, as amended. Based on Montana's failure to make appropriate corrective actions, the Program is accelerated to a one-year Review Cycle. ASC staff will return for a full Compliance Review June 14-16, 2011. By that time, Montana must have implemented the "Further Required Actions" listed in the attached Follow-up Report. Montana's failure to comply may result in more significant actions taken by the ASC.

Montana must:

- adopt and/or implement all relevant AQB Real Property Appraiser Qualification Criteria;¹
- use a reliable means of validating continuing education affidavits used by appraisers to support credential renewals;²
- use a reliable means of validating appraisal experience claims on all initial applications;³ and
- resolve all complaints filed against appraisers within one year, except for special documented circumstances.⁴

Please 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,



James R. Park
Executive Director

Attachment

cc: Mr. Jack Kane, Division Administrator
Ms. Jennie Worsech, Bureau Chief
Ms. Becky Zaharko, Program Manager

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

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

³ 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

⁴ Title XI § 1118 (a), 12 U.S.C. 3347; ASC Policy Statement 10E.

ASC Staff Follow-Up Report: 2009 Compliance Review

Montana Appraiser Regulatory Program (Program)		
Board of Real Estate Appraisers (Board)	Follow-Up Review Date: December 1-2, 2010	Follow-Up Report Issue Date: January 28, 2011
Department of Labor and Industry, Business Standards Division	Compliance Review Date: September 15 -16, 2009	
Number of State Credentialed Appraisers on National Registry: 424	PM: J. Tidwell	

Requirement/Guidance	ASC Staff Assessment Compliance (Yes/No) Areas of Concern (AC)			State Required/Recommended Actions from the September 15-16, 2009 Compliance Review	Status as of December 1-2, 2010 Follow-Up	Further Required Actions/Comments
	Yes	No	AC			
Montana Statutes, Regulations, Policies and Procedures:		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.)				The Required State Actions in the ASC Compliance Review Report (Report) required the Board to amend the cited rules to conform to Title XI and the AQB Real Property Appraiser Qualification Criteria (AQB Criteria).	ASC Staff received a copy of the proposed amendments. The Board initiated a rule review and rewrite at its December 2009 Board meeting. On October 27, 2010, the Bureau Chief approved the amendments and sent them to the Department for rules review. The amendments were to be filed in the Secretary of State's Office on December 13, 2010, and then published and a Notice for Comment sent. After a rules hearing, the Board intends to adopt the amendments. This is anticipated to occur at the March 2011 Board meeting.	Further Required Actions: Upon adoption, please provide ASC staff with copies of the adopted regulation changes.

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Application Process:		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>The Required State Actions in the Report required the Board to:</p> <p>(1) immediately cease accepting affidavits for continuing education (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; and</p> <p>(3) provide ASC staff a tabulation of the results of the audit.</p> <p>Additionally, the Board was required to immediately place 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 certified credentials as "ineligible to appraise in federally related transactions" until such time that the individuals meet AQB Criteria.</p>	<p>ASC Staff reviewed the current status of the Required State Actions from the Report:</p> <p>1. The Board was required to immediately cease accepting affidavits for continuing education (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. The Board has not conducted any renewals since the Report was issued for which ASC staff could determine whether the Board complied with this Required State Action.</p> <p>2. Concerning the required audit of Montana's March 31, 2010 CE cycle renewals, a total of 209 appraisers (100%) were audited for CE, of which 19 appraisers (9%) failed to respond or failed to provide proof of compliance with the required CE per AQB Criteria: 4 are pending action by the Board, 1 requested to be placed on inactive status, and 14 were allowed to complete the delinquent CE and their cases were dismissed by the Screening Panel. The decision to dismiss the 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, and the letter urged the Board 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.</p> <p>3. Concerning the 2004-2009 audits, the Board was required to immediately place individuals identified who did not provide proof of compliance with the required CE per AQB Criteria as non-AQB compliant on the National Registry and notify these individuals, as well as over stamp certified credentials as "ineligible to appraise in federally related transactions" until such time that the individuals meet AQB Criteria. Appraisers were identified who either failed to respond or failed to provide proof of compliance with the required CE per AQB Criteria. However, none of those appraisers identified have been reported as non-AQB compliant on the National Registry, notified, or over stamped "ineligible to appraise in federally related transactions" until such time as they meet AQB Criteria.</p>	<p>Further Required Actions: The Board must:</p> <p>(1) immediately place individuals who did not provide proof of compliance with the required CE per AQB Criteria during both the audit of the March 31, 2010 CE cycle renewals and the 2004-2009 audits as non-AQB compliant on the National Registry and notify these individuals, as well as over stamp their credentials ineligible to appraise in federally related transactions" until such time as the individuals meet AQB Criteria;</p> <p>(2) within 60 days of the issue date of this Report, provide to ASC staff the Board's decision and supporting rationale for each case identified in both the audit of the March 31, 2010 CE cycle renewals and the 2004-2009 audits in which the appraiser did not provide proof of having taken the required CE per AQB Criteria and Board rules;</p> <p>(3) complete a 100% audit of its March 31, 2011 CE cycle renewals within 60 days from the date the renewed credential is issued; and</p> <p>(4) provide ASC staff a tabulation of the results of the audit. The ASC policy manager assigned to Montana will work with the Department staff to determine the timing and content of the audit result tabulation.</p> <p>Comments: ASC staff will continue to monitor this area during the next Compliance Review on June 14-16, 2011.</p>

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Application Process continued:		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 Required State Actions in the Report required the Board to select the work products to be reviewed for USPAP compliance and maintain the documentation to support its validation methods for the ASC's review. The Board was also required to maintain information identifying each appraisal report reviewed such as 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.	ASC Staff reviewed the application files of the five applicants granted an original credential since May 21, 2010 (the date of the ASC's Final Compliance Review letter and Report). In all five cases, the State did not select the work products that were reviewed for USPAP compliance. Division staff stated that due to time constraints, they used appraisals selected and submitted by the applicant instead of subsequent appraisals selected by the State to review for USPAP compliance.	<p>Further Required Actions: The Board must select work product to be reviewed for USPAP compliance for every appraiser credential applicant, including the five credentialed between May 21, 2010, and December 1, 2010, and maintain 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 must maintain information identifying each appraisal report reviewed, such as 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> <p>Comments: ASC staff will continue to monitor this area during the next Compliance Review on June 14-16, 2011, for compliance with Title XI and ASC Policy Statement 10G.</p>

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Montana Appraiser Regulatory Program (Program)

Board of Real Estate Appraisers (Board)

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	Yes	No	AC			
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.)				<p>The Required State Actions in the Report required the Board to submit quarterly complaint logs to ASC staff to allow monitoring of the Board's progress towards addressing the timeliness of complaint investigation and resolution. Montana was cited as having 26 outstanding complaints, of which 11 (42 %) were over one year old.</p> <p>To strengthen its Program, the ASC recommended that the Board employ ways to process complaints of appraiser misconduct or wrongdoing in a timely manner to ensure compliance with Policy Statement 10E.</p>	<p>ASC Staff found that Montana had 26 outstanding complaints, of which 8 (31%) were unresolved for more than one year. Of the 8 dated complaints, 6 were more than one year old, 1 was more than two years old, and 1 was 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.</p>	<p>Further Required Actions: Montana is showing progress in its timeliness of complaint processing, and must continue to dedicate the necessary resources to the Program to bring it into compliance with Title XI and ASC Policy Statement 10E.</p> <p>Comments: ASC staff will continue to monitor this area during the next Compliance Review June 14-16, 2011, for compliance with Title XI and ASC Policy Statement 10E.</p>