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Appraisal Subcommittee

Federal Financial Institutions Examination Council

June 12, 2013

Mr. Scott Barber, Chair
West Virginia Real Estate Appraiser Licensing
and Certification Board
2110 Kanawha Blvd East, Suite 101
Charleston, WV 25311

RE: ASC Compliance Review of the West Virginia's appraiser regulatory program

Dear Mr Barber:

The Appraisal Subcommittee (ASC) staff conducted an ASC Compliance Review (Review) of the West Virginia appraiser regulatory program (Program) on December 10-12, 2012. 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 and
- States must ensure that the processing and investigating of complaints, and the sanctioning of appraisers is administered in an effective, consistent, equitable, and well-documented manner.²

ASC staff will confirm corrective actions have taken place and are appropriate through off-site monitoring and during the next Review. West Virginia will remain on a two- 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,



Darrin Benhart
Acting Chairman

Attachment

cc: Ms. Sandy Kerns, Executive Director

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.

“ASC Finding” Defined for ASC Compliance Review Report

1. IN SUBSTANTIAL COMPLIANCE

Applies when no issues of non-compliance or violations of Title XI, ASC Policy Statements or AQB Criteria are identified.

2. NOT IN SUBSTANTIAL COMPLIANCE

Applies when there are one or more issues of non-compliance or violations of Title XI, ASC Policy Statements and/or AQB Criteria but the concerns do not rise to the level of “not in compliance.”

3. NOT IN COMPLIANCE

Applies when the number, seriousness, and/or repetitiveness of the Title XI, ASC Policy Statements and/or AQB Criteria violations warrant this finding.

ASC Compliance Review Report

ASC Finding: Not In Substantial Compliance

Final Report Issue Date: June 12, 2013

West Virginia Appraiser Regulatory Program (Program)

WV Real Estate Appraiser Licensing and Certification Board (Board) / Decision Making

PM: V. Metcalf

ASC Compliance Review Date: December 10-12, 2012

Review Period: September 2010 to December 2012

Umbrella Agency: None

Number of State Credentialed Appraisers on National Registry: 544

Review Cycle: Two 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					
West Virginia 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.)				<p>A review of the Program's Statutes and Regulations revealed the following inconsistencies with the Appraiser Qualifications Board's Real Property Appraiser Qualification Criteria (AQB Criteria) regarding: (1) Continuing education (CE); and (2) Uniform Standards of Professional Appraisal Practice (USPAP) instructor requirements.</p> <p>AQB Criteria states that, for a partial year of licensure or certification consisting of 185 days or more, the appraiser must demonstrate 14 hours of CE. §Rule 190-3-4.1.c states that a licensee is not required to complete CE, if the time between the effective date of the initial license or certification and renewal is less than 9 months (approximately 270 days).</p> <p>Credit may only be awarded for USPAP CE when the course is instructed by at least one AQB certified USPAP instructor who is also a State certified appraiser. §Rule 190-3-5 5.5.b fails to require USPAP instructors to hold both an AQB Instructor Certification and a State Appraiser Certification.</p> <p>Despite the conflicting provisions in the regulation, ASC staff found no incidents where these regulations were applied to any aspect of the Program.</p>	<p>In an April 11, 2013 letter and a subsequent April 16th email, the Executive Director reported that, following the 2010 Review, the Board adopted an Emergency Rule that corrected Rule § 190-3-4.1.c for 15 months. The regular rule was not filed timely so the corrective action was not adopted in final. On August 31, 2012, the proposed Legislative Rule amendment was filed with the Secretary of State and Rule-Making Review Committee and subsequently introduced as House Bill 2638. The Bill passed on April 13, 2013.</p> <p>In addition, a rule change regarding USPAP instructors will be filed as an Emergency Rule Change by June 26, 2013. It will be accompanied by a regular rule filing which should become effective July 1, 2014.</p>	None	West Virginia should continue the process to amend its rules to bring them into compliance with AQB Criteria, and provide the ASC staff with a copy of the final rules once adopted.	ASC staff will pay particular attention to this area for compliance with Title XI and AQB Criteria.

ASC Compliance Review Report

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	YES	NO	AC					
West Virginia 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.)				The Board has been assigned five different Assistant Attorney General's (AAGs) in a 14 month period. West Virginia's failure to provide the Board consistent legal resources from the Attorney General's (AG's) office has contributed to the State's failure to resolve complaints timely.	In an April 11, 2013 response, the Executive Director reported that the complaint backlog began during the tenure of an AAG that resigned in September 2011. Between September 2011 and August 2012 the Board was assigned 5 different AAG's and had several complicated cases which further impacted the timeliness of complaint resolutions. The current AAG is very experienced and has been working with the Board for 7 months on a 1/2 time basis. The Executive Director noted this was more time than is typically allocated to professional Boards. The Executive Director stated that there is no reason to expect their current AAG will be reassigned.	None	West Virginia should identify necessary resources to achieve and maintain a Program which complies with Title XI. It promptly should take steps to obtain those resources and ensure that the resources remain available.	The State's response did not include any effort to secure additional resources. The Board is reminded that pursuant to Title XI, States must have sufficient legal and administrative resources to perform its Title XI- related duties. During the next Review, 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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	YES	NO	AC					
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
Education:	X			No compliance issues noted.	N/A	None	None	None
Enforcement:		X		No compliance issues noted.	N/A	None	None	None
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.)				West Virginia had 34 outstanding complaints of which 15 were unresolved for more than 1 year. Of the complaints outstanding for more than 1 year, 6 fall under the exception for special documented circumstances. All of the outstanding cases are awaiting settlement agreements, hearings and other actions that may only be facilitated through the AG's office.	In the April 11, 2013 letter, the Executive Director stated the current AAG facilitated the resolution of a number of backlogged cases, while keeping up with current cases. The Executive Director provided a chart in an April 16, 2013 email concluding that there were 33 not 34 outstanding complaints with 15 unresolved for more than 1 year at the time of the Review.	The Board must 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. The ASC Policy Manager assigned to the State will work with the Board staff to determine the log details.	None	Through off-site monitoring and during the next Review. ASC staff will pay particular attention to this area for compliance with ASC Policy Statement 10E.

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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/explanation to support the rationale for dismissal.	The April 11, 2013 letter provided examples of language the Standards Committee will use to appropriately and adequately reflect the reason for its recommendation to the Board for each complaint dismissal.	None	None	During the next Review. ASC staff will pay particular attention to this area for compliance with ASC Policy Statement 10E.
Enforcement continued:		X						
States must ensure that the processing and investigating of complaints, and the sanctioning of appraisers is administered in an effective, consistent, equitable, and well-documented manner. (Title XI § 1118 (a), 12 U.S.C. 3347; ASC Policy Statement 10E.)				<p>During the 2010 Review the ASC staff found an enforcement case involving a Board member that was handled in a manner not consistent with how similar matters were addressed for those who are not Board members. Documentation in the file failed to support the final disposition. In response, the Board established written policies on how to handle complaints involving Board members. In addition, the Board agreed to revisit the case and properly document the case's final disposition. During the current review we found the Board began the process of revisiting the case in question but has not rendered a final decision.</p> <p>During this Review Cycle, the Board received three additional complaints involving the same Board member that also remain unresolved.</p>	The April 11, 2013 response confirmed that the 2008 complaints were re-opened in September 2010 and independent appraisal reviews were received in February 2011. Additional complaints filed against the same individual received in June 2011, July 2012 and October 2012 have been combined with the previous complaints and added to the complexity of achieving final disposition. While the 1 previous AAG stated he could not be involved due to a conflict of interest, the current AAG has worked diligently to familiarize herself with the cases and is prepared to move forward.	The Board must submit a separate status report on these cases with its quarterly complaint logs to ASC staff. Staff will analyze the status report to ensure these cases are being handled appropriately and promptly. If satisfactory progress is not made, the ASC may place additional requirements on the State.		Through off-site monitoring and during the next Review, ASC staff will pay particular attention to this area to evaluate the process used to resolve these complaints.