

□ □ □ □ □ □

**Appraisal Subcommittee**  
*Federal Financial Institutions Examination Council*

November 2, 2007

Mr. Lawrence M. Reifurth, Director  
Hawaii Department of Commerce and Consumer Affairs  
P.O. Box 3469  
Honolulu, HI 96801

Dear Mr. Reifurth:

Thank you for your August 20, 2007 letter responding to our July 23<sup>rd</sup> field review letter concerning Hawaii's real estate appraiser regulatory program ("Program"). In that letter, we advised the Department of Commerce and Consumer Affairs ("Department") that it needed to address four concerns to bring your Program into substantial compliance with Title XI of the Financial Institutions, Reform, Recovery, and Enforcement Act of 1989, as amended, ("Title XI").

As discussed below, the Department resolved two concerns. We will perform follow-up review of the Program in May, 2008. At that time, we will evaluate your progress toward resolving the two remaining issues related to the need for more timely complaint resolutions and the State's adoption of the 2008 Appraiser Qualifications Board ("AQB") criteria.

- **Hawaii's regulations did not conform to current AQB criteria, and the State did not take sufficient steps to implement the 2008 criteria.**

During our field review, we found that the Department failed to adopt by regulation the provisions of the current AQB criteria and had not yet begun the rule making process to formally adopt regulations to ensure that the 2008 AQB criteria changes would be in place by the January 1, 2008 effective date. Our letter recognized that, in practice, Hawaii followed the current AQB criteria in its administration of the Program. We also noted that your staff informed us that it intended to implement the criteria changes informally until revised regulations are in place.

We also stressed in our July 23<sup>rd</sup> letter that, under Title XI, Hawaii must ensure that applicants for certification meet AQB's minimum qualification requirements and must have in place a formal legal structure setting forth those requirements. Towards that end, the ASC required you to take the following steps to address this situation:

1. Within 21 days from the date of our July 23<sup>rd</sup> field review letter, provide the ASC with a specific action plan to implement the 2003 and 2008 criteria changes. The State may choose to implement these changes in two ways. Hawaii could adopt formal rule changes implementing the 2003 AQB criteria changes on an expedited basis and then begin the rulemaking process to adopt the necessary changes for the 2008 AQB so that the 2008 criteria would be in place by January 1, 2008. In the alternative, the State could begin the rulemaking process as soon as possible to adopt the 2008 AQB criteria so that the changes would be in place by their January 1, 2008 effective date. Adopting separate rule

changes to incorporate the 2003 AQB criteria changes would be unnecessary as the 2008 criteria changes supersede the 2003 changes;

2. Provide for our comment and review a draft copy of the proposed rule changes discussed in item one;
3. Submit monthly reports regarding the status of the rulemaking efforts to Appraisal Policy Manager Vicki Ledbetter via email at Vicki@asc.gov; and
4. Notify the ASC in writing when those regulations are adopted.

In your August 20<sup>th</sup> letter, you stated your belief that you have taken adequate measures to address our concerns regarding your timely implementation of the 2008 AQB criteria. You noted that the rulemaking process is lengthy and could take a year or more to complete and that, if for some reason the rule making process could not be completed in a timely fashion despite your efforts, Hawaii Revised Statutes at § 466k-3, authorized you, as Director, to implement the AQB criteria upon its effective date. In that regard, you attached to your August 20<sup>th</sup> field review response a copy of a August 20<sup>th</sup> letter to Virginia Gibbs, ASC Chairman, stating that, under that statutory authority, you will formally adopt the 2008 (and 2003) AQB criteria changes, effective January 1, 2008. You also stated that Hawaii would take the following additional steps to address our concerns:

1. File with the Attorney General's Office and the Legislative Reference Bureau for review and comment, draft regulations that include comments received by the ASC staff;
2. Forward the regulations as reviewed and amended to the Small Business Regulatory Review Board, Department of Budget and Finance, Department of Business Economic Development and Tourism, and the Office of the Governor, successively, for approval to proceed to public hearing;
3. Expedite the review and approval by those offices, when possible;
4. Seek post-hearing approval for the regulatory adoption, should the public hearing not prompt any substantive changes;
5. Provide ASC staff status reports quarterly, not monthly, as we required;
6. Send the ASC a copy of the rules as submitted to the Attorney General's Office and subsequent changes to the proposed rules following each step; and
7. Notify the ASC in writing when the rules are adopted.

We believe that your plan should address our concerns, if it is effectively implemented. To help ensure that we can closely monitor the progress of your plan, Hawaii needs to send us status reports on a monthly, and not quarterly, basis. Close monitoring is necessary because of the brevity of your enabling statute; all specifics relating to your Program must be set out in regulations. For that reason, we expect Hawaii to take all steps necessary to ensure the most expeditious adoption of the draft regulations. We expect your first monthly status update by November 30, 2007, and expect that final regulations will be adopted before we return for our follow-up field review in May 2008.

- **The Department reactivated inactive appraiser credentials in a manner inconsistent with AQB criteria.**

ASC staff discovered during the field review that Hawaii reinstated the credential of one certified appraiser without the appraiser meeting the continuing education hours required under AQB criteria. Effective September 2005 and, as further clarified in an AQB Interpretation effective May 2006, prior to reactivating an Inactive credential, a credential holder must

complete all continuing education hours that would have been required if the credential were in Active status. This would include the most recent edition of the 7-hour National Uniform Standards of Professional Practice (“USPAP”) Update course. ASC staff determined that this appraiser needed to complete 132 hours of continuing education to qualify for reactivation.

To address this concern, the ASC required the Department to:

1. Refrain from reactivating certified appraisers who fail to conform to the AQB reactivation Interpretation;
2. Within 30 days from the date of our field review letter, notify the identified certified residential appraiser that she must complete the necessary continuing education courses within 60 days of the date of the Department’s notification letter;
3. Within 90 days from the date of our field review letter, initiate appropriate action against the appraiser, if she fails to document compliance with the AQB Interpretation and begin the process to downgrade the credential to a non-certified level;
4. As an alternative to completing the necessary continuing education courses, permit the appraiser to submit a new application and qualify as a new applicant. This process would include documenting the necessary qualifying education and experience to conform to current AQB criteria, and passing the appropriate examination;
5. Within 120 days from the date of our field review letter, provide the ASC with a written report confirming that steps one through three (or four) have been completed; and
6. Amend its regulations as soon as possible to comply with the AQB reactivation interpretation and keep us informed about the status of those rule amendments.

In your August 20<sup>th</sup> response, you stated that the Department had complied with all but the sixth step. Regarding that step, you noted that the Department is including appropriate changes to Hawaii Administrative Rule § 16-114-64 in the package of regulatory changes discussed above. In an August 30, 2007 letter, the Department advised us that the non-complying appraiser completed sufficient continuing education hours to retain her certification. Please update us about the status of these rule amendments in your monthly report regarding the rule proposals discussed in the previous section.

- **Hawaii did not investigate and resolve complaints in a timely manner.**

ASC Policy Statement 10 E provides that States need to process complaints on a timely basis, and that, absent special documented circumstances, final State administrative decisions regarding complaints should occur within one year of the complaint filing date. During the review, ASC staff found that seven of the ten outstanding complaints had been in process for more than one year, with no identifiable reasons for the delay. To address the ASC’s concerns, the ASC, in its July 23<sup>rd</sup> letter required the Department to:

1. Ensure that it investigates and resolves complaints in a timely manner, as required by ASC Policy Statement 10 E; and
2. Provide the ASC with a detailed plan describing how the Department will reduce the complaint-processing backlog and handle newly received complaints on a timely basis.

In response, you provided the following plan to cure this deficiency:

1. Real estate appraiser complaints will be assigned to one intake investigator, one field investigator (in the respective island), and one staff attorney, and each will be reminded to prioritize the processing of real estate appraiser complaints;
2. Upon receipt of a complaint, the assigned intake investigator, field investigator, and staff attorney will meet to assess the complaint allegations and discuss the method of investigating cases warranting investigation and possible prosecution or the closing of cases not warranting further investigation; and
3. Investigators will use appraisers who participate voluntarily on an advisory committee from each of the islands to provide independent reviews. The Department recently appointed five new neighbor island advisory committees to assist in the Department's investigatory efforts.

We hope that this plan is effectively implemented and addresses our concerns. We look forward to evaluating your progress during our follow-up field review.

- **Hawaii did not provide regular National Registry data submissions in accordance with ASC Policy Statement 8 E.**

ASC Policy Statement 8 E requires that States report appraiser-related data to the ASC for inclusion on the National Registry no less frequently than monthly. Yet, during the 24-month review period, the ASC received only seven data submissions. In our July 23<sup>rd</sup> field review letter, the ASC stated that the Department needed to: (1) develop and implement procedures to ensure the timely submission of National Registry data to the ASC; and (2) provide the ASC with a copy of those procedures.

In your August 20<sup>th</sup> response, you stated that you did not know that National Registry data submissions had to be sent at least monthly to the ASC. We note that the ASC adopted ASC Policy Statement 8 E on September 22, 1997, and that it has been included in each ASC Annual Report to Congress since that time. Annual Reports have been publicly available on our Web site for many years. In any event, in your August 20<sup>th</sup> letter, you stated that Hawaii would submit data monthly. We note that you have been doing so since June 2007.

Please contact us if you have any questions.

Sincerely,

Ben Henson  
Executive Director

cc: Alan Taniguchi, Executive Officer