

□ □ □ □ □ □

Appraisal Subcommittee

Federal Financial Institutions Examination Council

January 19, 2010

Mr. Bob Clark, Director
Office of Real Estate Appraisers
1102 Q Street, Suite 4100
Sacramento, CA 95814

Dear Mr. Clark:

The Appraisal Subcommittee (ASC) conducted an ASC Compliance Review (Review) of California's appraiser regulatory program (Program) on June 15-18, 2009. This is the final ASC Compliance Review Report (Report) on that Review.

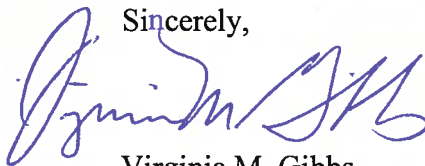
The ASC has considered the staff's preliminary findings regarding the Review and the State's response. The ASC has determined that the Program is not in substantial compliance with Title XI of the Financial Institutions, Reform, Recovery, and Enforcement Act of 1989, as amended (Title XI). The ASC identified the following concerns:

- California must use a reliable means of validating experience claims on all initial applications, including tax assessors.¹
- California should resolve complaints within 1 year, except for special documented circumstances.²

In the response, the State 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,



Virginia M. Gibbs
Chairman

Attachment

cc: Gillian Friedman, Deputy Attorney General

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; ASC Policy Statement 10G

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

ASC Compliance Review Report

Finding: Not In Substantial Compliance

California Appraiser Regulatory Program (Program)

California Office of Real Estate Appraisers (OREA)

Umbrella Agency: Business, Transportation and Housing Agency

PM: N. Fenochietti

ASC Compliance Review (Review) Date: June 15-18, 2009

Review Period: 07/2008 - 06/2009

Number of State credentialed appraisers on National Registry: 13,922

Issue Date: January 19, 2010

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					
California Statutes, Regulations, Policies and Procedures:			X					
States must adopt and/or implement AQB real property appraiser certification 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>The following sections of OREA regulations are not compliant with the AQB Real Property Appraiser Qualification Criteria and/or ASC Policy Statements:</p> <p>Article 4, section 3563(b)(2) allows an applicant with assessor experience to submit an attestation from the employer in place of a log.</p> <p>Article 3, section 3543(6) provides for review and acceptance of distance education courses for a certified applicant that have not been IDECC approved.</p> <p>Article 3, section 3544 allows teaching of qualifying education to satisfy the qualifying education requirement for certification.</p> <p>Article 4, section 3566 allows courses taken by challenge examination to be used to satisfy the qualifying education for certification.</p> <p>Section 11340 (b) of State statute sets forth the following:</p> <p>(1) tax assessor experience is deemed equivalent to federally-related real estate appraisal activity; and</p> <p>(2) 1,000 hours of real estate broker valuation is deemed to satisfy appraisal license application experience.</p> <p>Despite the conflicting provisions in both the statute and regulations, we did not find these provisions were being applied to any aspect of the Program.</p>	<p>On September 23, 2009, OREA staff reported they had initiated a number of revisions to their regulations in June of 2008. However, lack of in-house counsel negatively impacted their ability to complete the rulemaking process in accordance with California's Administrative Procedures Act. The recently hired staff counsel will complete the requisite regulation revisions no later than June 30, 2010.</p> <p>OREA provided ASC staff with proposed regulation revisions that, if adopted, will bring the California Code of Regulations into compliance with the requirements of Title XI, AQB Real Property Appraiser Qualification Criteria, and ASC Policy Statements.</p>	None	<p>To strengthen the Program, OREA should consider revising the following regulations to comply with AQB Real Property Appraiser Qualification Criteria for trainee and licensed level applicants:</p> <p>Article 3, section 3541(d) provides that real estate brokers with 1,000 hours of real estate appraisal experience meet the minimum requirement for the state licensed classification.</p> <p>Article 3, section 3543 provides that real estate appraisal courses administered by schools approved by the California Department of Real Estate as part of the requirement to become a real estate broker are exempt from the accreditation and IDECC distance education approval.</p> <p>Moreover, some of the courses may not be in appraisal related topics, and therefore not AQB compliant.</p> <p>Article 3, section 3543 (4) exempts IDECC approval for distance education courses for trainees and licensed levels.</p>	<p>OREA must continue to report to the National Registry any licensed level appraiser who does not meet AQB Real Property Appraiser Qualification Criteria. When reviewing applicants applying for an upgrade, special attention must be given to ensure that the experience and education is AQB compliant for the given certification level.</p> <p>Upon adoption, please provide ASC staff with copies of adopted regulation and statute changes.</p>

ASC Compliance Review Report

Finding: Not In Substantial Compliance

California Appraiser Regulatory Program (Program)

California Office of Real Estate Appraisers (OREA)

Umbrella Agency: Business, Transportation and Housing Agency

PM: N. Fenochietti

ASC Compliance Review (Review) Date: June 15-18, 2009

Review Period: 07/2008 - 06/2009

Number of State credentialed appraisers on National Registry: 13,922

Issue Date: January 19, 2010

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					
Temporary Practice:			X					
States must issue temporary practice permits for a minimum of six months and allow at least one easy extension of a temporary practice permit. (Title XI § 1118 (a), 12 U.S.C. 3347; Title XI § 1122 (a), 12 U.S.C. 3351; AQB Real Property Appraiser Qualification Criteria; ASC Policy Statement 5.)				Article 2, section 3525, of OREA regulation requires that a temporary permit be issued for one year or until the home State credential expires, whichever occurs first. It does not allow the term of permits issued to be extended. ASC staff identified five temporary permits that were issued for a term less than six months. The expiration dates appeared to be based on the expiration date of the credential held in the home State. Several individuals held active credentials issued by other States that were valid for a period longer than that of the home State, but the home State was used as the basis of the expiration date.	The proposed revisions to the California Code of Regulations (discussed above) will provide for an extension, and notice to the Temporary Practice Permit applicants that an extension is allowed.	None	To strengthen the Program, OREA should continue to pursue the regulation revisions, and the current practice of issuing extensions to permit holders upon request.	During the next Review, the ASC will pay particular attention to this area to ensure compliance with ASC Policy Statement 5. Upon adoption, please provide ASC staff with copies of adopted regulation changes.
National Registry:	X							
States must reconcile and pay National Registry invoices timely. (Title XI § 1109 (a), 12 U.S.C. 3338; Title XI § 1118 (a), 12 U.S.C. 3347; ASC Policy Statement 8C.)				Title XI § 1109 (a) and ASC Policy Statement 8 require States to pay National Registry invoices timely. There were two outstanding invoices that were past due. The California Comptroller was not aware of the statutory requirement to pay the National Registry fee, and therefore refused payment.	OREA provided the Comptroller with a copy of Title XI. The past due payments were received by the ASC on June 20, 2009.	None	None	None

ASC Compliance Review Report

Finding: Not In Substantial Compliance

California Appraiser Regulatory Program (Program)

California Office of Real Estate Appraisers (OREA)

ASC Compliance Review (Review) Date: June 15-18, 2009

Review Period: 07/2008 - 06/2009

Umbrella Agency: Business, Transportation and Housing Agency

PM: N. Fenochietti

Number of State credentialed appraisers on National Registry: 13,922

Issue Date: January 19, 2010

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					
Application Process: States must use a reliable means of validating experience claims on all initial applications, including tax assessors. (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.)		X		ASC staff found files on applicants who appeared to have been issued credentials based on assessor experience claimed via affidavit. OREA was cited for this same violation in the 2008 Compliance Review. To date, OREA has not completed tasks required by the ASC as a result of the 2008 Review, wherein it was determined that OREA followed a different process for tax assessors who applied to become certified real estate appraisers. OREA allowed tax assessors to provide an affidavit certifying the appraiser's tax assessing experience. As a result, in 2008, OREA was directed by the ASC to identify all applicants who were credentialed based on tax assessor experience, and have them submit a log from which reports would be selected for review by OREA. The State did audit files beginning with the inception of the Program through January 1, 2005.	On September 23, 2009, OREA reported the policy of accepting assessor experience by affidavit ceased, effective January 1, 2005. The few licenses that were erroneously granted experience credit by assessor affidavit subsequent to January 1, 2005, have since complied by submitting AQB compliant work samples. OREA identified 20 active appraiser licensees who prior to January 1, 2005, received their experience credit by letter of affidavit from assessor offices. Letters requesting the submission of work logs have been sent to 18 of these licensees. OREA reported that these letters have resulted in lengthy phone calls and threats of litigation. OREA asserts that these licensees are an insignificant number and that the ASC is requiring the Program to retroactively enforce a "2005 affidavit rule." OREA is concerned that litigation will cause the Program's resources to be redirected, potentially interfering with OREA's enforcement goals to resolve complaints within one year. OREA requested that the ASC consider "grandfathering" these few appraisers who became credentialed by assessor experience claimed via affidavit.	OREA must complete the process of determining the status of compliance for each appraiser and provide ASC staff with the final results. Once the process is complete, OREA must: (1) downgrade certified appraisers who cannot provide acceptable experience documentation to a non-certified credential; and/or (2) reissue certified appraiser credentials with corrected effective dates to appraisers who did not have the necessary experience at the time the certified credential was issued and now have obtained the requisite experience.	Though the ASC cannot grant the States request to "grandfather in" certain appraisers, Policy Statement 10G does set forth that OREA is free to tailor their methods of making this determination to fit their unique needs. The ASC will review the method on a case-by-case basis to determine whether that method is acceptable for Title XI compliance. ASC Policy Statement 10B states the following: "While the ASC has no preference for any specific methodology, State Agencies, at a minimum, should have a reliable means of validating both education and experience claimed for certification or licensing."	During the next Review, the ASC expects to see this resolved.
Reciprocity:	X			No compliance issues noted.	N/A	None	None	None

ASC Compliance Review Report

Finding: Not In Substantial Compliance

California Appraiser Regulatory Program (Program)

California Office of Real Estate Appraisers (OREA)

ASC Compliance Review (Review) Date: June 15-18, 2009

Review Period: 07/2008 - 06/2009

Umbrella Agency: Business, Transportation and Housing Agency

PM: N. Fenochietti

Number of State credentialed appraisers on National Registry: 13,922

Issue Date: January 19, 2010

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 must ensure continuing education courses are consistent with AQB 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>ASC staff reviewed 86 course files. The course files were not well documented. One file for an on-line USPAP Update course did not include a Course Approval Program (CAP) approval as a USPAP equivalent course.</p> <p>Seven courses were listed as OREA approved qualifying education on the OREA website; however these courses had not been reviewed for compliance with the AQB Real Property Appraiser Qualification Criteria.</p> <p>Two continuing education course files did not include documentation of the subject matter or CAP approval.</p> <p>Two 2-hour continuing education courses did not appear to be real estate appraisal related.</p>	<p>On September 23, 2009, OREA staff reported the on-line USPAP Update course was reviewed and found to be a CAP-approved USPAP equivalency course.</p> <p>The seven courses that were listed on the OREA website as approved qualifying education that had not been reviewed for 2008 criteria compliance were subsequently approved for continuing education credit only. OREA staff is reviewing the OREA website to ensure that no other qualifying courses that have not been reviewed for AQB Real Property Appraiser Qualification Criteria compliance show as approved for qualifying education.</p> <p>The two continuing education courses have been reviewed and determined to be real estate appraisal related live classes not requiring CAP or IDECC approval.</p> <p>The two continuing education courses that did not appear to be real estate appraisal related were reviewed and determined to be appropriate.</p>	None	To strengthen the Program, OREA should implement an effective policy and procedure to ensure documentation used to approve education offerings are properly retained.	During the next Review, the ASC will pay particular attention to this area to ensure compliance with AQB Real Property Appraiser Qualification Criteria, and confirm the courses identified are appropriate.
Education Continued:			X					
States must ensure continuing education courses are consistent with AQB 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>Distance continuing education course approval applications did not require IDECC approval or review of the delivery method.</p>	<p>On September 23, 2009, OREA reported course applications had been revised to clearly state the need for delivery mechanism approval for distance education courses.</p> <p>OREA now requires all distance education providers to submit renewed IDECC approval documentation prior to the OREA course approval expiration date.</p>	None	None	None

ASC Compliance Review Report				Finding: Not In Substantial Compliance				
California Appraiser Regulatory Program (Program)								
California Office of Real Estate Appraisers (OREA)			ASC Compliance Review (Review) Date: June 15-18, 2009		Review Period: 07/2008 - 06/2009			
Umbrella Agency: Business, Transportation and Housing Agency		PM: N. Fenochietti	Number of State credentialed appraisers on National Registry: 13,922		Issue Date: January 19, 2010			
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					
Enforcement:		X						
States should resolve complaints within 1 year, except for special documented circumstances. (Title XI § 1118 (a), 12 U.S.C. 3347; ASC Policy Statement 10E.)				<p>No compliance issues noted. California had 415 outstanding complaints; 235 complaints were unresolved for more than one year. Of those, 59 were more than two years old, and 4 were more than three years old. 90 of these aged complaints were in the Office of the Attorney General awaiting prosecution and 145 were pending investigation at OREA. No special circumstances were documented.</p> <p>While California's complaint investigation and resolution is not in compliance with Policy Statement 10E for timeliness, the files were well documented and resolutions appear to be fair and equitable.</p>	<p>On September 23, 2009, OREA reported that additional staff were hired subsequent to the June 2009 Review (a Department Counsel and Property Appraiser Investigator). OREA is also hiring two additional Investigators. The aged cases are being prioritized and triaged. Since the Review, 54 cases have been closed by the new Investigator.</p> <p>OREA has revised processing of complaints to improve and expedite their process:</p> <p>(1) an initial contact letter is being sent to the respondent upon OREA's receipt of a complaint. The letter cites the alleged USPAP violations. It is expected to expedite the complaint process by encouraging stipulated settlements;</p> <p>(2) the OREA Department Counsel, with the assistance of the Attorney General, now prepares the accusations making the process more expedient;</p> <p>(3) OREA is expanding the tele-work program which, in the past, resulted in increased case closure; and</p> <p>(4) seven staff were sent to the AARO-ASC-TAF co-sponsored Investigator Training in 2009.</p>	<p>OREA must submit quarterly complaint logs to the ASC. Staff will analyze each log. If progress is not being made, the ASC may impose additional reporting and/or data collection requirements.</p> <p>The ASC Policy Manager assigned to California will work with OREA staff to determine the timing and content of the complaint log.</p>	<p>To strengthen the Program, OREA should continue to employ ways to process, in a timely manner, complaints of appraiser misconduct or wrongdoing to ensure compliance with Policy Statement 10E.</p>	<p>During the next Review, the ASC expects to see an improvement in California's complaint investigation and resolution program. None</p>