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Appraisal Subcommittee

Federal Financial Institutions Examination Council

May 21, 2010

Mr. John Howden, Chair
New Mexico Real Estate Appraisers Board
Boards and Commissions Division
Regulation and Licensing Department
2550 Cerrillos Road, Second Floor
Santa Fe, NM 87505

Dear Mr. Howden:

The Appraisal Subcommittee (ASC) staff conducted an ASC Compliance Review (Review) of New Mexico's appraiser regulatory program (Program) on November 4-6, 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. New Mexico must:

- have policies, practices and procedures that are consistent with Title XI;¹
- have sufficient legal and administrative resources to perform Title XI related duties;²
- adopt and/or implement all relevant Appraiser Qualifications Board Real Property Appraiser Qualification Criteria;³
- regulate, supervise and discipline their certified and/or licensed appraisers;⁴ and
- resolve all complaints filed against appraisers within one year, except for special documented circumstances.⁵

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. Amanda M. Storie, REA Board Administrator
Ms. Tania Maestas, Assistant Attorney General
Ms. Linda Trujillo, RLD/BCD Director
Ms. Kelly O'Donnell, Ph.D., RLD Superintendent

¹ Title XI § 1118 (a), 12 U.S.C. 3347; and ASC Policy Statement 10A

² Title XI § 1118 (b), 12 U.S.C. 3347

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

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

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

ASC Compliance Review Report

Finding: Not In Substantial Compliance

Report Issue Date: May 21, 2010

New Mexico Appraiser Regulatory Program (Program)			
New Mexico Real Estate Appraisers Board (Board)		ASC Compliance Review (Review) Date: November 4 - 6, 2009	Review Period: November 2007 - November 2009
Umbrella Agency: New Mexico Regulation and Licensing Department, Boards and Commissions Division (Department)	PM: J. Tidwell	Number of State credentialed appraisers on National Registry: 744	Issue: FINAL

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					
New Mexico Statutes, Regulations, Policies and Procedures:		X						
The ASC shall monitor State agencies for the purpose of determining whether policies, practices and procedures are consistent with Title XI. (Title XI § 1118 (a), 12 U.S.C. 3347; and ASC Policy Statement 10A.)				ASC staff determined that complaints are being closed without proper processing due to New Mexico's two-year statute of limitations. The two-year statute of limitations requires issuance by the Attorney General's (AG) office of a Notice of Contemplated Action (NCA) within two years of receipt of a complaint. The statute specifies that certain specified actions, or actions related to unlicensed activity, shall not be initiated later than two years after the discovery by the Board of the conduct that would be the basis for the action. In cases where the AG failed to issue the NCA timely, cases were closed solely on the basis that the two years had expired.	On March 15, 2010, the Board reported to ASC staff that they are discussing introducing a Bill during the 2011 legislative session to exempt the Board from the application of the two-year statute of limitations.	New Mexico must immediately cease closing unresolved enforcement cases on the basis of the two-year statute of limitations.	New Mexico should introduce a bill at the 2011 legislative session to exempt the Board from application of the two-year statute of limitations.	During a Follow-up Review in approximately 6-9 months, and the next Compliance Review, ASC staff will pay particular attention to this area for compliance with Title XI and AQB Criteria.

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New Mexico Appraiser Regulatory Program (Program)

New Mexico Real Estate Appraisers Board (Board)

ASC Compliance Review (Review) Date: November 4 - 6, 2009

Review Period: November 2007 - November 2009

Umbrella Agency: New Mexico Regulation and Licensing Department, Boards and Commissions Division (Department)

PM: J. Tidwell

Number of State credentialed appraisers on National Registry: 744

Issue: FINAL

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					
New Mexico Statutes, Regulations, Policies and Procedures continued:		X						
States must have sufficient legal and administrative resources to perform Title XI related duties. (Title XI § 1118 (b), 12 U.S.C. 3347.)				New Mexico's lack of sufficient legal resources has resulted in the AG's office failing to timely investigate and resolve complaints.	On March 15, 2010, the Board reported to ASC staff that the AG's office stated the primary reason for the lack of timeliness in processing complaints was a lack of staff due to an 18-month hiring freeze. The Litigation Division, which handles all NCA requests for more than 30 boards and commissions, had been understaffed by twenty-five percent. The AG's office further responded that the Litigation Division would endeavor to manage the Board's NCA requests as efficiently as possible.	The Department, Board and AG's office must find ways to achieve and maintain the necessary resources to perform its Title XI related duties.	None	None

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	YES	NO	AC					
New Mexico Statutes, Regulations, Policies and Procedures, continued:		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.)				Section 16.62.1.7 (A) of the New Mexico Administrative Code (Title 16 Occupational and Professional Licensing, Chapter 62 Real Estate Appraisers) referencing acceptable appraisal experience states that all experience claimed after December 1, 1990, must be in conformance with USPAP. This does not reflect the new AQB Real Property Appraiser Qualification Criteria (AQB Criteria) language that requires all experience to be obtained after January 30, 1989, and that the experience must be USPAP compliant.	On March 15, 2010, the Board reported to ASC staff that they scheduled a rule hearing for July 1, 2010, to address and correct the areas of non-compliance.	New Mexico must 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.	During the Compliance Review, a few minor provisions requiring amendment were discussed and should be addressed by New Mexico.	During a Follow-up Review, and the next Compliance 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
National Registry:	X							
				No compliance issues noted.	N/A	None	None	None

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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:	X							
States must ensure appraiser credential applications submitted for processing do not contain expired examinations (24-month examination validity period). Valid applications should be timely processed. (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 2.)				ASC staff determined one instance of a certification being issued wherein the examination validity period had expired. The applicant had taken the certified residential exam by mistake at the time of upgrade to the licensed level. When the applicant later upgraded to the certified residential level, he was allowed to use that certified residential exam even though it was over 24 months old. It appeared this was a one-time exception.	New Mexico reported to ASC staff that they required the identified appraiser to re-take the examination. The appraiser successfully completed the examination on January 20, 2010.	No further action required.	None	None
Reciprocity:	X			No compliance issues noted.	N/A	None	None	None

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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 appraiser 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>New Mexico approved education courses with content that appeared to be inconsistent with AQB Criteria for continuing education. These were non-real property-related courses, and professional organization ethics courses.</p> <p>Several distance education courses did not have proof of secondary provider International Distance Education Certification Center (IDECC) approval.</p> <p>The list of State approved qualifying and continuing education courses did not contain the expiration dates of the courses. Expiration dates need to coincide with the AQB Course Approval Program and/or IDECC approvals when applicable.</p>	<p>New Mexico reported to ASC staff on March 15, 2010, that the Board staff completed an extensive evaluation of qualifying and continuing education courses, and removed all courses that did not comply with AQB Criteria from the list of Board approved courses. The course sponsors were notified by letter that they must reapply and submit proof of compliance with AQB Criteria. The course listing will include expiration dates in the future.</p>	<p>No further action required.</p>	<p>To strengthen the Program, New Mexico should monitor the results of its revised process to ensure that all courses approved by the Board are compliant with AQB Criteria.</p>	<p>During a Follow-up Review, and the next Compliance Review, ASC staff will pay particular attention to this area for compliance with Title XI and AQB Criteria.</p>

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Requirement/Guidance	Compliance (YES/NO) Areas of Concern (AC)			ASC Staff Observations	State Response	Required State Actions	Recommended State Actions	General Comments
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Enforcement:		X						
States must regulate, supervise and discipline their certified and/or licensed appraisers. (Title XI § 1118 (a), 12 U.S.C. 3347; ASC Policy Statement 10A.)				The closure of unprocessed complaints based upon New Mexico's two-year statute of limitations (as discussed above) does not foster adequate regulation, supervision or discipline of certified and/or licensed appraisers within the State. Title XI created the national appraiser regulatory system to provide federal financial institutions with assurance that those performing work for federally related transactions would be subject to effective supervision.	On March 15, 2010, the Board reported to ASC staff that they are discussing introducing a Bill during the 2011 legislative session to exempt the Board from application of the two-year statute of limitations.	New Mexico must immediately cease closing unresolved enforcement cases on the basis of the two-year statute of limitations.	New Mexico should introduce a bill at the 2011 legislative session to exempt the Board from application of the two-year statute of limitations.	During a Follow-up Review, and the next Compliance Review, ASC staff will pay particular attention to this area for compliance with Title XI and Policy Statement 10A.

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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>New Mexico had 40 outstanding complaints; of those 40 complaints, 15 complaints were unresolved for more than one year, and one complaint was exempted for special documented circumstances.</p> <p>ASC staff determined that the AG's office was responsible for the unacceptable delay due to the fact that issuance of pre-NCA's or NCA's often took seven months or more. Seven cases were pending at the AG's office awaiting the drafting of NCA's. One had been pending in the AG's office for 16 months, two for 12 months, three for 7 months, and one for 3 months.</p>	<p>On March 15, 2010, the Board and Department reported to ASC staff that they identified processes within their control to ensure that complaints are processed timely. This revised process will give the AG's office six to nine months to issue a NCA.</p> <p>The Board further reported that the Department met with the AG's office and were close to reaching an agreement to ensure future compliance with ASC Policy Statement 10A. The AG's Office would endeavor to manage the Board's NCA requests as efficiently as possible.</p>	<p>New Mexico must monitor its revised processes to ensure timely processing of complaints to reduce the backlog of aged complaints, and to ensure that the complaints of appraiser misconduct or wrongdoing are resolved on a timely basis as required by ASC Policy Statement 10E.</p> <p>New Mexico must submit complaint logs to ASC staff quarterly. Staff will analyze each log. If progress is not made, the ASC may place additional requirements upon the State.</p> <p>The ASC Policy Manager assigned to New Mexico will work with the Department staff to determine the timing and content of the complaint log.</p>	None	During a Follow-up Review, and the next Compliance Review, ASC staff will pay particular attention to this area for compliance with Title XI and Policy Statement 10E.