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Appraisal Subcommittee

Federal Financial Institutions Examination Council

August 16, 2010

Mr. Thomas Rife, Chairman
Arkansas Appraiser Licensing and
Certification Board
101 East Capitol, Suite 430
Little Rock, AR 72201

RE: ASC Compliance Review of Arkansas' appraiser regulatory program

Dear Mr. Rife:

The Appraisal Subcommittee (ASC) staff conducted an ASC Compliance Review (Review) of Arkansas' appraiser regulatory program (Program) on March 2-4, 2010. 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 (Title XI). The ASC identified the following concerns:

- Arkansas' certification and licensing requirements must meet the minimum requirements set forth in Title XI;¹
- Arkansas' policies, practices and procedures should be consistent with Title XI;²
- Board members, and any persons in policy or decision-making positions, must perform their responsibilities consistently;³
- Arkansas must use a reliable means of validating experience claims on all initial applications;⁴
- Arkansas must ensure continuing education courses are consistent with Appraiser Qualifications Board Real Property Appraiser Qualification Criteria;⁵
- Arkansas must ensure that the system for processing and investigating complaints and sanctioning appraisers is administered in an effective, consistent, equitable, and well-documented manner;⁶ and
- Arkansas must regulate, supervise and discipline its certified and/or licensed appraisers.⁷

The State's response indicated corrective actions were taken as detailed in the attached Report. During the next Follow-up Review in approximately six months, 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: Mr. James Martin, Executive Director

¹ Title XI § 1116, 12 U.S.C. 3345.

² Title XI § 1118 (a), 12 U.S.C. 3347.

³ Title XI § 1118 (a), 12 U.S.C. 3347; ASC Policy Statement 1.

⁴ 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.

⁵ Title XI § 1116 (a), 12 U.S.C. 3345; Title XI § 1118 (a), 12 U.S.C. 3347; AQB Real Property Appraiser Qualification Criteria.

⁶ Title XI § 1118 (a), 12 U.S.C. 3347; ASC Policy Statement 10E.

⁷ Title XI § 1118 (a), 12 U.S.C. 3347; ASC Policy Statement 10A.

ASC Compliance Review Report

Finding: Not in Substantial Compliance

Report Issue Date: August 16, 2010

Arkansas Appraiser Regulatory Program (Program)

Arkansas Appraiser Licensing and Certification Board (Board)

ASC Compliance Review (Review) Date: March 2-4, 2010

Review Period: June 2008 to March 2010

Umbrella Agency: Independent

PM: V. Ledbetter

Number of State credentialed appraisers on National Registry: 863

Issue: FINAL

Requirement/Guidance	Compliance (YES/NO)			ASC Staff Observations	State Response	Required State Actions	Recommended State Actions	General Comments
	YES	NO	AC					
Arkansas Statutes, Regulations, Policies and Procedures:			X					
States' certification and licensing requirements must meet the minimum requirements set forth in Title XI. (Title XI § 1116, 12 U.S.C. 3345.)				State statute §17-14-103(23&24) requires that the scope of practice for each credential level meet that prescribed by the "ASC" and the financial institutions. This reference to the "ASC" rather than the "AQB" (Appraiser Qualifications Board) is in error. This was corrected in the Arkansas regulations to properly reference the AQB.	On April 26, 2010, the Board reported that the Executive Director traced the error to the original 1991 legislation. The error was acknowledged and will be addressed during a legislative session of the General Assembly in which the administrative code may be considered.	None	The State's statute should be amended to reference the AQB instead of the ASC. Please provide the ASC with a copy of the proposed amendment and the final action once complete.	None
Arkansas Statutes, Regulations, Policies and Procedures continued:			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.)				State statute §17-14-205(b) establishes that the Board may not investigate actions of, or conduct any disciplinary hearing regarding, any licensee, registrant, or certificate holder wherein the action initiating the complaint or investigation is more than three years prior to such complaint or investigation. ASC staff was informed that this statutory provision was added in 2005 or 2006 in direct response to a settlement agreement for a lawsuit. As part of the settlement, the Board supported the enactment of legislation to establish a statute of limitations period for complaints. The agreement further stated that the Board supported a five-year statute of limitations, but would not oppose legislation establishing a three-year statute of limitations period.	On April 26, 2010, the Board reported that it reluctantly consented, as part of an out of court settlement, to take a "non-position" regarding a proposal to adopt a three-year statute of limitations. In order to repeal §17-14-205(b) or modify the time period, it would have to be adopted by the Arkansas General Assembly (legislature).	None	The Board should pursue the elimination, or at least an expanded term, of the statute of limitations to ensure there is sufficient time to address complaints received, particularly those from the lending community.	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. Because of the nature of mortgage and commercial lending, concerns about appraisals may not be identified until three or more years after a loan is approved and the property becomes the subject of a foreclosure or quality control proceeding. The State's three-year statute of limitations could adversely affect an institution's ability to file a complaint regarding questionable appraisal practices.

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	YES	NO	AC					
Arkansas Statutes, Regulations, Policies and Procedures continued:		X						
Board members, and any persons in policy or decision-making positions, must perform their responsibilities consistently. (Title XI § 1118 (a), 12 U.S.C. 3347; ASC Policy Statement 1.)				<p>The revocation of a former Board member's credential was not reported to the ASC for inclusion on the National Registry, was not published in the Board's newsletter, and the individual was not mentioned by name in meeting minutes when his case was referenced more than two years after the action was taken. The complainant in the case corresponded with the Board on July 6, 2009, regarding this "oversight." The Board took no corrective action. Moreover, the complaint file did not contain a copy of the July 25, 2007 Findings of Fact, Conclusions of Law and Order which ordered the revocation.</p> <p>In another matter, a Board member while serving his term was given continuing education credit for courses that were not approved. The courses were not on the Board's approved continuing education course list; nor were they processed as an individual request for course approval. Neither the course provider nor the applicant applied and paid an application fee to have the course reviewed.</p>	<p>In a March 8, 2010 email, Board staff provided to ASC staff the missing enforcement actions.</p> <p>On April 26, 2010, the Board reported that a number of the concerns cited by ASC staff could be attributed to the Board staff's failure to timely perform their duties in a competent and consistent manner. The Board also reported that a prior disciplinary action was appropriately published in 1999, but that staff failed to report the action to the ASC for inclusion on the National Registry. The Executive Director has emphasized to the Board staff that all disciplinary actions are to be reported to the ASC for inclusion on the National Registry in a timely manner.</p>	<p>Within 60 days of receipt of this Report, the Board must establish written procedures for handling complaints, applications, and renewals involving Board members to ensure compliance with Title XI.</p>	None	During a Follow-up Review, ASC staff will monitor the corrective actions taken by the Board in response to the Required State Actions herein.
Temporary Practice:	X				N/A	None	None	None
National Registry:	X					None	To strengthen the Program, the Board should develop a procedure to ensure that it routinely submits all disciplinary actions to the ASC for inclusion on the National Registry.	It appears that Board staff has reported to the ASC for inclusion on the National Registry all disciplinary actions taken since the Review. During a Follow-up Review, ASC staff will pay particular attention to this area for compliance with ASC Policy Statement 9A.
States must submit all disciplinary actions for inclusion on the National Registry. (Title XI § 1118 (a), 12 U.S.C. 3347; ASC Policy Statement 9A.)				During the Review Period, the Board did not submit to the ASC for inclusion on the National Registry at least 15 corrective sanctions, 4 voluntary surrenders in lieu of disciplinary actions, and the Board member's revocation.	In a March 8, 2010 email, Board staff submitted to the ASC for inclusion on the National Registry all disciplinary actions taken during the Review Period that were not previously reported to the ASC.	None	To strengthen the Program, the Board should develop a procedure to ensure that it routinely submits all disciplinary actions to the ASC for inclusion on the National Registry.	It appears that Board staff has reported to the ASC for inclusion on the National Registry all disciplinary actions taken since the Review. During a Follow-up Review, ASC staff will pay particular attention to this area for compliance with ASC Policy Statement 9A.

ASC Compliance Review Report

Finding: Not in Substantial Compliance
Report Issue Date: August 16, 2010

Arkansas Appraiser Regulatory Program (Program)

Arkansas Appraiser Licensing and Certification Board (Board)

ASC Compliance Review (Review) Date: March 2-4, 2010

Review Period: June 2008 to March 2010

Umbrella Agency: Independent

PM: V. Ledbetter

Number of State credentialed appraisers on National Registry: 863

Issue: FINAL

Requirement/Guidance	Compliance (YES/NO)			ASC Staff Observations	State Response	Required State Actions	Recommended State Actions	General Comments
	YES	NO	AC					
Application Process:		X						
States must use a reliable means of validating 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.)				<p>The Board approved experience claims submitted for certification that were not consistent with AQB Real Property Appraiser Qualification Criteria (AQB Criteria). In the case of one certification issued, the work product review documentation in the file stated that the work did not comply with the Uniform Standards of Professional Appraisal Practice (USPAP). The Board approved another applicant's experience for certification based on experience which did not appear to be USPAP compliant. The certification of this individual is pending his successful completion of the examination.</p> <p>The Board and Board staff stated they have accepted similar experience from applicants for certification since 1997. ASC staff's review of the files of other applicants with similar backgrounds did not find that the Board has accepted non-USPAP compliant experience. As such, ASC staff is not recommending an extensive audit of the application files.</p> <p>In another application file, the experience log serving as the basis for the certification did not specify the specific hours spent on each assignment.</p>	The Board and Executive Director have provided numerous letters and emails in response to this concern. They have repeatedly asserted that acceptance of such experience is appropriate.	The Board must obtain from each of the individuals (including the appraiser who failed to include the specific hours spent on each assignment) an experience log properly documenting the required hours of USPAP compliant experience in the appraisal of real property and validate the same. For those individuals unable to demonstrate the requisite hours of USPAP compliant experience, the Board must: (1) downgrade the individual's credential to a non-certified level and report the downgrade to the ASC for inclusion on the National Registry; or (2) recall the individual's credential and over-stamp to note the individual is ineligible to appraise property for federally related transactions, and report the individual to be removed from the National Registry.	None	During a Follow-up Review, ASC staff will monitor the corrective actions taken by the Board in response to the Required State Actions herein.
Application Process continued:		X						
States must ensure appraiser continuing education courses are consistent with 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 Board granted one applicant (a current Board member) 21 hours of continuing education credit for courses that did not appear to conform with AQB Criteria. Specifically, the courses accepted were in non-real property related areas: (1) Forest Taxation and Estate Planning Workshop; (2) Agent and Broker Responsibility and Ethics; and (3) Professionalism in Real Estate.	On April 26, 2010, the Board affirmed that neither the Forest Taxation and Estate Planning course or the real estate courses were approved by the Board. In a March 8, 2010 email, Board staff reported the appraiser was given 14 hours for two Board seminars conducted in 2007 and 2008. Board staff confirmed that the Board member's continuing education was deficient by 7 hours, and the matter is being corrected by the appraiser.	Within 60 days of receiving this Report, the Board must ensure the appraiser in question has demonstrated the completion of the remaining 7 hours of continuing education. If the appraiser is unable to do so within that timeframe, the appraiser's credential must be downgraded or inactivated. Please note the appraiser may not use the continuing education hours toward a future renewal.	None	During a Follow-up Review, ASC staff will monitor the corrective actions taken by the Board in response to the Required State Actions herein.

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Umbrella Agency: Independent

PM: V. Ledbetter

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Issue: FINAL

Requirement/Guidance	Compliance (YES/NO)			ASC Staff Observations	State Response	Required State Actions	Recommended State Actions	General Comments
	YES	NO	AC					
Reciprocity:	X			No compliance issues noted.	N/A	None	None	
Education:	X			No compliance issues noted.	N/A	None	None	None
Enforcement:		X						
States must ensure that the system for processing and investigating complaints and sanctioning 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.)				The Board does not have an effective system for tracking and monitoring the status of complaints. The official log maintained by the Board does not reflect the current status of each complaint. Entries appear to attempt to track the flow of the complaint, but are unreliable because the terminology used is inconsistent and the final dispositions are not often reflected. The Deputy Director maintains the log and stated that there is no process in place to ensure that she is consistently notified of final actions taken. ASC staff found that a separate spreadsheet created by the Administrative Assistant, with the addition of two columns, could (if maintained) adequately address the tracking and status of complaints.	On April 26, 2010, Board staff noted that in the previous 18 years, and multiple reviews, there was never an issue raised as to the adequacy or inadequacy of their complaint tracking system.	The Board must establish written policies and procedures on tracking the investigation and resolution of complaints, and must establish procedures to assure notification of final action to the Deputy Director or other staff responsible for maintaining the log.	None	While complaint tracking has not been a concern in previous Compliance Reviews, this Compliance Review Report is based primarily on findings of the ASC staff during the current Compliance Review Period. During a Follow-up 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 system for processing and investigating complaints and sanctioning 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.)				As set forth above, the Board handled some Board members' disciplinary matters in a manner not consistent with how similar matters were addressed for those who are not Board members.	On April 26, 2010, the Board reported that a number of the concerns cited by ASC staff could be attributed to the Board staff's failure to timely perform their duties in a competent and consistent manner.	Within 60 days of receipt of this Report, the Board must establish written procedures for handling complaints involving Board members.	None	During a Follow-up Review, ASC staff will pay particular attention to this area for compliance with ASC Policy Statement 10E.

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Issue: FINAL

Requirement/Guidance	Compliance (YES/NO) Areas of Concern			ASC Staff Observations	State Response	Required State Actions	Recommended State Actions	General Comments
	YES	NO	AC					
Enforcement continued:			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.)				As set forth above, State statute §17-14-206(b) establishes a three-year statute of limitations. According to the complaint log provided, the Board could not process three cases as a result of this statute. One of the cases was from a lending institution that filed a complaint 3 years and 6 months after the date of the appraisal. Foreclosure proceedings had begun. Inconsistencies and problems with the appraisal used as the basis for the loan were identified by the complainant. The Board informed the complainant by letter that the Board did not have jurisdiction because of its three-year statute of limitations.	As stated above, on April 26, 2010, the Board attributed this result to an out of court settlement.	None	The statute does not foster adequate regulation, supervision and discipline of certified and/or licensed appraisers within the State as required by ASC Policy Statement 10A. Therefore, the statute should be repealed.	During a Follow-up Review, ASC staff will pay particular attention to this area for compliance with ASC Policy Statement 10A.
Enforcement continued:			X					
States must ensure that the system for processing and investigating complaints and sanctioning 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.)				The statute of limitations, as illustrated in the instance stated above, also results in the State not investigating complaints, and/or sanctioning appraisers in a consistent and equitable manner.	As previously stated, the Board attributed this result to an out of court settlement.	None	The statute does not foster the sanctioning of appraisers in an effective, consistent, and equitable manner as required by ASC Policy Statement 10E. Therefore, the statute should be repealed.	During a Follow-up Review, ASC staff will pay particular attention to this area for compliance with ASC Policy Statement 10E.