

Appraisal Subcommittee
Federal Financial Institutions Examination Council

December 3, 2010

Mr. Daniel Shapiro, 1st Deputy Secretary of State
NY Department of State
Division of Licensing Services
Board of Real Estate Appraisal
P.O. Box 22001
Albany, NY 12201-2001

RE: Appraisal Subcommittee Staff Follow-Up Review

Dear Mr. Shapiro:

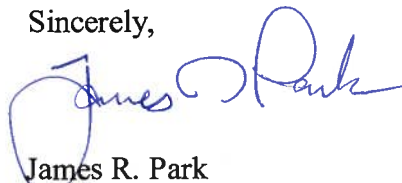
Thank you for your cooperation and your staff's assistance in the September 23, 2010 Appraisal Subcommittee (ASC) staff Follow-up Review (Follow-up Review). This was a Follow-up Review of the September 2009 ASC Compliance Review of New York's appraiser regulatory program (Program).

As detailed in the attached ASC Staff Follow-up Report, New York resolved all but three concerns identified in the 2009 Compliance Review Report. New York also made significant progress towards addressing two of the remaining concerns. We commend the New York Program for its efforts and the progress made in these areas.

However, timeliness of enforcement has worsened. The Board must process complaints of appraiser misconduct or wrongdoing in a timely manner. Dedication of the necessary resources appears to be deficient, thereby hindering the Program's ability to bring its enforcement into compliance with Title XI and ASC Policy Statement 10. ASC staff will continue to monitor this area. Failure to address this deficiency for the September 2011 Compliance Review may result in ASC staff recommending to the ASC a finding of non-compliance.

Please 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,



James R. Park
Executive Director

Attachment

cc: Mr. Dominick Pompeo, Appraisal Board Chair

ASC Staff Follow-Up Report: 2009 Compliance Review

New York Appraiser Regulatory Program (Program)		
New York Board of Real Estate Appraisal (Board)	Follow-Up Review Date: September 23, 2010	Follow-Up Report Issue Date: December 3, 2010
Department of State (Department)	Compliance Review Date: September 14-18, 2009	
Number of State Credentialed Appraisers on National Registry: 4592	PM: J. Tidwell	

Requirement/Guidance	ASC Staff Assessment Compliance (Yes/No) Areas of Concern (AC)			State Required/Recommended Actions from the September 14-18, 2009 Compliance Review	Status as of September 23, 2010 Follow-Up	Further Required Actions/Comments
	Yes	No	AC			
New York 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.)				Inconsistencies with State regulations and the Appraiser Qualifications Board Real Property Appraiser Qualification Criteria (AQB Criteria) were identified as an area of concern.	During the September 23, 2010 Follow-up Review, ASC staff received a copy of the adopted regulatory changes. The regulatory changes were adopted on July 20, 2010, and became effective August 4, 2010. The adopted regulatory changes brought the regulations into compliance with Title XI and AQB Criteria.	Further Required Actions: None Comments: ASC staff will continue to monitor during the next Compliance Review in September 2011.
Temporary Practice:	X					
States must issue temporary practice permits within five business days of receipt of a completed application. (Title XI § 1118 (a), 12 U.S.C. 3347; Title XI § 1122 (a), 12 U.S.C. 3351; ASC Policy Statement 5.)				To strengthen the Program, the ASC recommended that the Board should monitor the results of its revised process to ensure temporary practice permits are processed within five business days of application receipt.	During the September 23, 2010 Follow-up Review, ASC staff reviewed 15 temporary practice applications received between July 8, 2010 and August 19, 2010. All were processed within five business days of application receipt. It appears that the new changes made to the process have brought temporary practice processing into compliance with Title XI and ASC Policy Statement 5.	Further Required Actions: None Comments: ASC staff will continue to monitor during the next Compliance Review in September 2011.
Temporary Practice continued:	X					
States should rely on the National Registry to verify license history on applicants for temporary practice. (Title XI § 1118, 12 U.S.C. 3347; ASC Policy Statement 5.)				To strengthen the Program, the ASC recommended that the Board should also use the National Registry in the processing of temporary practice applications.	During the September 23, 2010 Follow-up Review, ASC staff reviewed 15 temporary practice applications received between July 8, 2010 and August 19, 2010. All were processed using the National Registry license history report. It appears that the new changes made to the process have brought temporary practice processing into compliance with Title XI and ASC Policy Statement 5.	Further Required Actions: None Comments: ASC staff will continue to monitor during the next Compliance Review in September 2011.
National Registry:	X					
States must submit all disciplinary actions to the ASC for inclusion on the National Registry. (Title XI § 1118 (a), 12 U.S.C. 3347; ASC Policy Statement 9A.)				Although the ASC found the Board's response adequate to address this concern, the ASC required that during the Follow-up Review, ASC staff pay particular attention to this area for compliance with Title XI and ASC Policy Statement 9.	During the Follow-up Review, ASC staff found that 87 disciplinary actions had been reported for inclusion on the National Registry for the period of October 2, 2009 to August 18, 2010. Based on a comparison with the dispositions noted on the Board's complaint log, these appear to fully cover all disciplinary actions taken by the Board since the 2009 Compliance Review.	Further Required Actions: None Comments: ASC staff will continue to monitor during the next Compliance Review in September 2011.

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Application Process:		X				
States must require all continuing education (CE) for re-instatement of an appraiser credential be 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.)				<p>The final ASC Compliance Review Report required the Department and Board to:</p> <ul style="list-style-type: none"> (1) cease reinstating certified appraiser credentials to individuals failing to demonstrate CE hours sufficient for the lapsed period; (2) identify all individuals who were reinstated after June 2007, and did not provide sufficient documentation to show that the appraiser met all the requisite CE; (3) contact the individuals identified above and request documentation to show the credential holder met the hours of CE at the time of reinstatement; (4) downgrade certified appraisers who cannot provide acceptable CE documentation to a non-certified credential; (5) reissue certified appraiser credentials with corrected effective dates to appraisers who did not have the necessary CE at the time the certified credential was reissued, and have subsequently obtained the requisite education; and (6) provide a report to ASC staff with the final results. 	<p>During the September 23, 2010 Follow-up Review, ASC staff found that New York identified 34 individuals who were reinstated after June 2007. New York provided a report to ASC staff detailing the status of each of the 34 individuals. 31 individuals were found to either have completed required CE in accordance with AQB Criteria or were on inactive status on the National Registry.</p> <p>Two of the 34 individuals had not responded to the first letter requesting proof of the required CE and had been sent a second and final letter on September 16, 2010, giving five days to respond. One individual had only provided proof of part of the required CE and was currently taking a course to make up the deficient hours. He will be given an additional five days to complete the course. If the three individuals do not provide proof of compliance, then due process will be afforded and appropriate disciplinary action taken.</p> <p>During the Follow-up Review, ASC staff further requested and reviewed all reinstatement applications processed since the September 2009 Compliance Review. One reinstatement application had been received and processed. It was found to have been processed appropriately.</p>	<p>Further Required Actions: The Department and Board must continue with appropriate action regarding the three individuals who have not provided proof of completion of the required continuing education in accordance with AQB Criteria.</p> <p>Comments: ASC staff will monitor this required action and confirm compliance with AQB Criteria during the September 2011 Review.</p>

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Application Process continued:		X				
States must use a reliable means of validating appraiser experience claims on all initial applications for appraiser credentialing. (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 Department and Board were required to:</p> <p>(1) immediately cease awarding certified credentials to applicants whose work product has not been validated as Uniform Standards of Professional Appraisal Practice (USPAP) compliant;</p> <p>(2) identify all individuals who were issued certified credentials relying upon improperly validated experience;</p> <p>(3) downgrade certified appraisers who cannot provide acceptable experience documentation to a non-certified credential;</p> <p>(4) 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 subsequently obtained the requisite experience; and</p> <p>(5) provide a report to ASC staff with the final results.</p>	<p>During the September 23, 2010 Follow-up Review, ASC staff found that nine individuals had been identified as using mass appraisal experience since June 2007. These individuals were required to provide logs of experience and Board staff selected two work samples. Those two samples were reviewed for compliance with the USPAP.</p> <p>Five of the individuals' work samples were found to be USPAP compliant. Four of the individuals' work samples had identified deficiencies. Board Legal Counsel is currently reviewing those four files. If the legal review finds that their experience does not comply with USPAP, then the individuals will be afforded due process and appropriate action will be taken.</p> <p>During the Follow-up Review, ASC staff also requested and reviewed all applications processed since the September 2009 Compliance Review using mass appraisal experience. One application had been received and the experience was currently being reviewed by a Regional Advisor for USPAP compliance. (Regional Advisors are contracted Certified appraisers competent and experienced in the types of properties they are reviewing.) ASC staff will confirm compliance with AQB Criteria during the September 2011 Compliance Review.</p>	<p>Further Required Actions: The Department and Board must continue with appropriate action regarding the four individuals whose work samples are being reviewed for compliance with USPAP.</p> <p>Comments: ASC staff will monitor this required action and confirm compliance with AQB Criteria and ASC Policy Statement 10G during the September 2011 Compliance Review.</p>
Application Process continued:	X					
States must use a reliable means of validating appraiser experience claims on all initial applications for appraiser credentialing. (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>To strengthen the Program, the ASC recommended that the Board should ensure it does not accept experience earned after January 1, 2008, on experience logs that do not contain, at a minimum: (1) the type of property; (2) date of report; (3) address of appraised property; (4) description and scope of work; (5) number of actual work hours; and (6) the signature of the supervising appraiser on each page.</p>	<p>During the September 23, 2010 Follow-up Review, ASC staff received a copy of the experience log currently being utilized for all experience earned after January 1, 2008. It contained all the required information.</p> <p>Also during the 2010 Follow-up Review, ASC staff reviewed ten initial certification applications received between July 8, 2010 and August 19, 2010. All were processed using the new experience log, which contained all necessary data.</p>	<p>Further Required Actions: None</p> <p>Comments: The Board's resolution addressed the concern.</p>

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Application Process continued:	X					
States must use a reliable means of validating appraiser experience claims on all initial applications for appraiser credentialing. (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.)				Although the ASC found the Board's response adequate to address this concern, the ASC required that during the Follow-up Review, ASC staff pay particular attention to this area for compliance with AQB Criteria.	During the September 23, 2010 Follow-up Review, ASC staff discovered that applicants were required to submit at least four work samples randomly selected by Program staff from the experience log. All samples were forwarded to Regional Advisors for evaluation of USPAP compliance. The Regional Advisors completed a USPAP compliance checklist which was maintained in the applicant's file. Also during the Follow-up Review, ASC staff requested and reviewed ten original certification applications received between July 8, 2010 and August 19, 2010. All ten applicants were processed using a reliable means of validating appraiser experience in compliance with Title XI, AQB Criteria and ASC Policy Statement 10.	Further Required Actions: None Comments: ASC staff will continue to monitor during the next Compliance Review in September 2011.
Education:	X					
States should ensure that course approval expiration dates assigned by the State coincide with course approval expiration dates assigned by AQB's CAP and/or IDECC. (Title XI § 1118 (a), 12 U.S.C. 3347; AQB Real Property Appraiser Qualification Criteria.)				Although the ASC found the Board's response adequate to address this concern, the ASC required that during the Follow-up Review, ASC staff pay particular attention to this area for compliance with AQB Criteria.	The September 23, 2010 Follow-up Review revealed that the Board's course approval letter has been modified to indicate that Board approval based on IDECC's endorsement is in effect only as long as the IDECC endorsement for the course is current. In addition, the Board closely monitored, on a monthly basis, approved distance education courses for IDECC expirations. The course application form was modified to provide details regarding online requirements and to request a copy of the current IDECC certificate. Also during the 2010 Follow-up Review, ASC staff reviewed all distance education courses approved since the 2009 Compliance Review. Twenty-five distance education courses had been approved and all contained current IDECC approvals.	Further Required Actions: None Comments: ASC staff will continue to monitor during the next Compliance Review in September 2011.

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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.)				Although the ASC found the Board's response adequate to address this concern, the ASC required that during the Follow-up Review, ASC staff pay particular attention to this area for compliance with ASC Policy Statement 10E.	<p>During the September 23, 2010 Follow-up Review, ASC staff discovered 150 outstanding complaints of which 19 (12.5%) were unresolved for more than one year. One of these cases involved special documented circumstances; seven had been heard and were awaiting the judges decision; 11 were in the hearing process.</p> <p>In discussions with Board staff, ASC staff stressed the need to commit the necessary resources to the enforcement program. Board staff said they are taking advantage of the Level I and II Investigator Training courses to prepare additional investigators to assist with appraisal investigations. They stated that they plan to commit additional investigative time to the complaint process. Board staff also indicated that delays in scheduling of hearings is causing the majority of their delays. The State lost one of its judges to retirement and currently has only two judges to handle all hearings for the State's 30 regulated professions.</p>	<p>Further Required Actions: Because ASC staff found the timeliness of complaint resolution has worsened, the Board must find ways to process complaints of appraiser misconduct or wrongdoing in a timely manner to ensure compliance with Policy Statement 10E. Dedication of the necessary resources appears to be deficient, thereby hindering the Program's ability to bring its enforcement into compliance with Title XI and ASC Policy Statement 10.</p> <p>Comments: ASC staff will continue to monitor this area. Failure to address this deficiency for the September 2011 Compliance Review may result in ASC staff recommending to the ASC a finding of non-compliance.</p>