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Appraisal Subcommittee

Federal Financial Institutions Examination Council

August 14, 2013

Mr. James Collins, Director
Division of Professional Regulation
Cannon Building, Suite 203
861 Silver Lake Blvd.
Dover, DE 19904

RE: ASC Compliance Review of Delaware's appraiser regulatory program

Dear Mr. Collins:

The Appraisal Subcommittee (ASC) staff conducted an ASC Compliance Review (Review) of the Delaware appraiser regulatory program (Program) on January 9-11, 2013. 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. The ASC identified the following areas of non-compliance:

- States must complete the continuing education affidavit audit within 60 business days from the date the renewal credential was issued;¹
- States must ensure that qualifying education documentation submitted with an application for appraiser credential upgrade is consistent with AQB Real Property Appraiser Qualification Criteria;²
- States must ensure that appraiser experience logs conform to AQB Real Property Appraiser Qualification Criteria;³
- States must use a reliable means of validating appraiser experience claims on all initial applications for appraiser credentialing;⁴
- States must ensure appraiser continuing education courses are consistent with AQB Real Property Appraiser Qualification Criteria;⁵ and
- States should resolve all complaints filed against appraisers within one year, except for special documented circumstances.⁶

ASC staff will confirm corrective actions have taken place and are appropriate through off-site monitoring, a follow-up review in approximately 3 months and during the next Review. Delaware will remain on a two-year Review Cycle.

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,



Arthur Lindo
Chairman

Attachment

cc: Ms. Amanda McAtee, Board Liaison
Ms. Kay Warren, Deputy Director
Ms. Georgianna Trietley, Board Chair

¹ Title XI § 1116, 12 U.S.C. 3345; Title XI § 1118 (a), 12 U.S.C. 3347; ASC Policy Statements.

² Title XI § 1116, 12 U.S.C. 3345; Title XI § 1118 (a), 12 U.S.C. 3347; AQB Criteria.

³ Title XI § 1116, 12 U.S.C. 3345; AQB Criteria.

⁴ Title XI § 1116, 12 U.S.C. 3345; Title XI § 1118 (a), 12 U.S.C. 3347; AQB Criteria; ASC Policy Statements.

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

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

ASC Finding” Defined for ASC Compliance Review Report

1. IN SUBSTANTIAL COMPLIANCE

Applies when no issues of non-compliance or violations of Title XI, ASC Policy Statements or AQB Criteria are identified.

2. NOT IN SUBSTANTIAL COMPLIANCE

Applies when there are one or more issues of non-compliance or violations of Title XI, ASC Policy Statements and/or AQB Criteria but the concerns do not rise to the level of “not in compliance.”

3. NOT IN COMPLIANCE

Applies when the number, seriousness, and/or repetitiveness of the Title XI, ASC Policy Statements and/or AQB Criteria violations warrant this finding.

ASC Compliance Review Report

ASC Finding: **Not In Substantial Compliance**
Final Report Issue Date: **August 14, 2013**

Delaware Appraiser Regulatory Program (Program)		Umbrella Agency: Council on Real Estate Appraisers (Council) / Decision Making		PM: V. Metcalf	ASC Compliance Review Date: January 9-11, 2013	Review Period: March 2011 to January 2013
Umbrella Agency: Department of State, Division of Professional Regulation (Division)				Number of State Credentialed Appraisers on National Registry: 621	Review Cycle: Two Year with Follow-up	

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					
Delaware Statutes, Regulations, Policies and Procedures:			X					
States must adopt and/or implement all relevant AQB Real Property Appraiser Qualification Criteria. (Title XI § 1116, 12 U.S.C. 3345; Title XI § 1118 (a), 12 U.S.C. 3347; AQB Real Property Appraiser Qualification Criteria.)				<p>A review of the Delaware Administrative Code revealed the following inconsistencies with the Appraiser Qualifications Board's (AQB) Real Property Appraiser Qualification Criteria (AQB Criteria) regarding: (1) continuing education (CE) hours; (2) education courses; (3) CE credit; and (4) CE audits.</p> <ul style="list-style-type: none"> • AQB Criteria states that, for a partial year of licensure or certification consisting of 185 days or more, the appraiser must demonstrate 14 hours of CE per year. Delaware regulation §2.3.1.2 requires 14 hours of CE after at least 6 months but fewer than 24 months of licensure. • AQB Criteria effective January 1, 2008 eliminated business courses from its list of acceptable CE course topics. Delaware regulation §2.5.6 lists as acceptable education "business course related to real estate appraisal." This was noted in the 2011 Compliance Review Report. • AQB Criteria does not permit the course instructor's preparation time for CE credit. Delaware regulation §2.5.7.1 allows CE credit for "teaching, including preparation time up to the number of hours spent teaching." This was noted in the 2011 Compliance Review Report. • AQB Criteria requires appraisers to complete 14 hours of CE for each year preceding the credential renewal and ASC Policy Statement 10 specifies that States accepting affidavits for the CE claimed must complete a CE audit within 60 days from the date of renewal. Delaware regulation §2.5.1 states that the "Council will notify licensees within sixty (60) days after January 31 that they have been selected for audit." 	On April 23, 2013, the Division provided ASC staff a copy of Emergency Proposed Rules as published on March 1, 2013 in the Delaware Register of Regulations. Specifically the proposal amends §2.3.1.2, §2.3.1.3, §2.5.6, §2.5.7.1, §2.5.1 to correct the regulatory provisions in question. The Council conducted a hearing on the proposed rules on April 22, 2013.	None	To strengthen the Program, Delaware should continue the process of amending its regulations to be consistent with AQB Criteria.	Upon adoption, please provide ASC staff with copies of these regulation changes.
Temporary Practice:	X			No compliance issues noted.	N/A	None	None	None
National Registry:	X			<p>The Council did not correctly report all disciplinary actions for inclusion on the National Registry.</p> <ul style="list-style-type: none"> • 1 sanction imposing a fine and probation was not reported to the ASC for inclusion on the National Registry. • 1 disciplinary action was reported and included on the National Registry but the Council failed to remove it after the decision was overturned upon appeal to the superior court. 	On April 23, 2013, the Division reported to ASC staff that the information on the National Registry was updated. The Division established internal procedures to ensure that appropriate staff has access to and is reporting all disciplinary actions.	None	None	The Division's resolution addresses the concern.
Application Process:			X	<p>All Delaware appraisers last renewed their credentials, by affidavit in October 2011. The Council did not conduct a post renewal audit of CE affidavits to identify appraisers who failed to comply with Federal and State law.</p>	On April 23, 2013, the Division reported to ASC staff that a random audit of 25% of the State's appraiser population was conducted. The licensees selected were required to submit proof of completed CE. In addition, "show cause" hearings have been scheduled for those who failed to comply.	Within 60 days of the date of this Report, Delaware must provide ASC staff a detailed account of the results of the audit which includes: (a) all credentials audited detailing any deficiencies; (b) the results of the "show cause" hearings and (c) verification that all non-compliant individuals have been placed on inactive status on the National Registry.	None	During a Follow-up Review in the Fall of 2013, 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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Delaware Appraiser Regulatory Program (Program)				Umbrella Agency: Council on Real Estate Appraisers (Council) / PM: V. Metcalf		ASC Compliance Review Date: January 9-11, 2013		Review Period: March 2011 to January 2013	
Decision Making				Umbrella Agency: Department of State, Division of Professional Regulation (Division)		Number of State Credentialed Appraisers on National Registry: 621		Review Cycle: Two Year with Follow-up	
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 continued:									
States must ensure that qualifying education documentation submitted with an application for appraiser credential upgrade is consistent with AQB Real Property Appraiser Qualification Criteria. (Title XI § 1116, 12 U.S.C. 3345; Title XI § 1118 (a), 12 U.S.C. 3347; AQB Real Property Appraiser Qualification Criteria.)		X		ASC staff found 2 certified appraiser application files that did not contain documentation to support the college education claimed.	On April 23, 2013, the Division confirmed that the education of 2 applicants were not properly reviewed. In addition, the Division reported that the 2 applicants will be required to provide the proper documentation to support their education claims. Should the applicants not produce the required education, the Division will work with the Council and its Deputy Attorney General to rescind and/or downgrade the licenses issued.	The Division must evaluate the application files and any additional information provided and determine whether the education claimed meets AQB Criteria. Within 60 days of the date of this Report, provide ASC staff with written findings of the evaluation. For applicants that do not meet AQB Criteria, submit evidence of action taken to revoke the credential and report the credential as "does not meet AQB Criteria" and "inactive" on the National Registry.	None	During a Follow-up Review in the Fall of 2013, and the next Compliance Review, ASC staff will pay particular attention to this area for compliance with Title XI and AQB Criteria.	
Application Process continued:									
States must ensure that appraiser experience logs conform to AQB Real Property Appraiser Qualification Criteria. (Title XI § 1116, 12 U.S.C. 3345; AQB Real Property Appraiser Qualification Criteria.)		X		An appraiser application file did not contain an experience log that conformed to AQB Criteria.	On April 23, 2013, the Division reported that the Council failed to require an experience log for 1 applicant and relied on an affidavit of experience that did not comply with AQB Criteria. The Division reported that the Council will ensure all applicants provide an experience log going forward.	The Division must evaluate the application file and any additional information provided and determine whether the experience claimed meets AQB Criteria. Within 60 days of the date of this Report, provide ASC staff with written findings of the evaluation. If the experience claimed does not meet AQB Criteria, submit evidence of action taken to revoke the credential and report the credential as "does not meet AQB Criteria" and "inactive" on the National Registry.	None	During a Follow-up Review in the Fall of 2013, and the next Compliance Review, ASC staff will pay particular attention to this area for compliance with Title XI and AQB Criteria.	
Application Process continued:									
States must use a reliable means of validating appraiser experience claims on all initial applications for appraiser credentialing. (Title XI § 1116, 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		The Council did not review the work product for Uniform Standards of Professional Appraisal Practice (USPAP) compliance on 1 applicant for general certification.	On April 23, 2013, the Division confirmed the Council failed to require work samples from 1 certified general applicant. The applicant claimed the work was un-retrievable. The Division reported that the Council will ensure that work samples are reviewed for all applicants going forward.	The Division must evaluate the application file and any additional information provided and determine whether the experience claimed meets AQB Criteria, is verifiable and compliant with USPAP. Within 60 days of the date of this Report, provide ASC staff with written findings of the evaluation. If the applicant does not meet AQB Criteria, submit evidence of action taken to revoke the credential and report the credential as "does not meet AQB Criteria" and "inactive" on the National Registry.	None	During a Follow-up Review in the Fall of 2013, and the next Compliance Review, ASC staff will pay particular attention to this area for compliance with Title XI and AQB Criteria.	
Reciprocity:	X			No compliance issues noted.	N/A	None	None	None	

ASC Compliance Review Report

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Final Report Issue Date: August 14, 2013

Delaware Appraiser Regulatory Program (Program)

Umbrella Agency: Council on Real Estate Appraisers (Council) / PM: V. Metcalf

ASC Compliance Review Date: January 9-11, 2013

Review Period: March 2011 to January 2013

Umbrella Agency: Department of State, Division of Professional Regulation (Division)

Number of State Credentialed Appraisers on National Registry: 621

Review Cycle: Two Year with Follow-up

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 Real Property Appraiser Qualification Criteria. (Title XI § 1116, 12 U.S.C. 3345; Title XI § 1118 (a), 12 U.S.C. 3347; AQB Real Property Appraiser Qualification Criteria.)				The Council approved a CE course with content inconsistent with AQB Criteria.	On April 23, 2013, the Division reported that the Council will ensure that approval of all future CE courses contain real estate appraisal related content.	Within 60 days of the date of this Report, the Council must: (1) review the approved course in question to determine whether it met AQB Criteria; (2) remove the course or hours that do not meet AQB Criteria from approved status; and (3) notify ASC staff in writing of the Council's findings.	None	During a Follow-up Review in the Fall of 2013, and the next Compliance Review, ASC staff will pay particular attention to this area for compliance with Title XI and applicable ASC Policy Statements.
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.)				Delaware had 32 outstanding complaints of which 13 were unresolved for more than 1 year. Of the complaints outstanding for more than 1 year, none fall under the exception for special documented circumstances. Of those 32 cases, 1 was received in 2010; 12 in 2011; and 19 in 2012. In addition, 11 cases, including 10 of the dated cases, were in the Attorney General's (AG) Office awaiting final disposition, the remaining 22 cases were in various stages of the disciplinary process.	On April 23, 2013, the Division reported that the Council will make the AG Office aware of this recommendation and the Division will make every effort to give priority to real estate appraiser complaints.	Delaware must submit quarterly complaint logs to ASC staff. Staff will analyze each log. If progress is not made, the ASC may place additional requirements upon the State. The ASC Policy Manager assigned to Delaware will work with the Division staff to determine the log details.	None	During a Follow-up Review in the Fall of 2013, and the next Compliance Review, ASC staff will pay particular attention to this area for compliance with Title XI and applicable ASC Policy Statements.
Enforcement continued:			X					
States must appropriately document enforcement files and include rationale. (Title XI § 1118 (a), 12 U.S.C. 3347; ASC Policy Statement 10E.)				The Delaware AG may dismiss cases referred to that office by the Council, after an investigation identified USPAP and/or other State law or regulation violations. During 2012, the AG initiated a new policy to use 1 of 8 brief standard statements in the closing memo for dismissed cases instead of an explanation of the reasoning behind each decision as previously provided.	On April 23, 2013, the Division reported that the Council will make the AG Office aware of this recommendation to comply with the federal enforcement provisions to appropriately document enforcement files and include rationale.	None	The AG Office should ensure that all enforcement actions are properly documented and include clear rationale for dismissals and other final actions taken as required by ASC Policy Statements.	During a Follow-up Review and the next Compliance Review, ASC staff will pay particular attention to this area for compliance with applicable ASC Policy Statements.