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Appraisal Subcommittee

Federal Financial Institutions Examination Council

February 12, 2014

Mr. Anthony Giardina, Executive Deputy Secretary of State
New York Department of State
Division of Licensing Services
Board of Real Estate Appraisal
P O Box 22001
Albany, NY 12201-2001

RE: ASC Compliance Review of New York's Appraiser Regulatory Program

Dear Mr. Giardina:

The Appraisal Subcommittee (ASC) staff conducted an ASC Compliance Review (Review) of the New York appraiser regulatory program (Program) on October 21-25, 2013, to determine the Program's compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended.

The ASC considered the preliminary results of the Review and the State's response to those results. The Program is given an ASC Finding of "Needs Improvement." The final ASC Compliance Review Report (Report) is attached. The ASC identified the following areas of non-compliance:

- States must ensure that appraiser education courses are consistent with AQB Criteria;¹
- States must maintain relevant documentation to enable understanding of the facts and determinations in the matter and the reasons for those determinations; and²
- States must resolve all complaints filed against appraisers within one year (12 months) of the complaint filing date, except for special documented circumstances.³

ASC staff will confirm appropriate corrective actions have been taken through off-site monitoring and during the next Review. New York will remain on a two-year Review Cycle.

This letter and the attached Report are public records and available on the ASC website. Please contact us if you have any questions about this Report.

Sincerely,



Arthur Lindo
Chairman

Attachment

cc: Mr. Cesar Perales, Secretary of State
Ms. Linda Baldwin, General Counsel
Mr. Marcos Vigil, Deputy Secretary of State
Ms. Kathy McCoy, Director of Licensing Services

¹ Title XI § 1118 (a), 12 U.S.C. § 3347; AQB Real Property Appraiser Qualification Criteria; ASC Policy Statement 6.
² Title XI § 1118 (a), 12 U.S.C. § 3347; AQB Real Property Appraiser Qualification Criteria; ASC Policy Statement 6.
³ Title XI § 1118 (a), 12 U.S.C. § 3347; ASC Policy Statement 7.

ASC Finding Descriptions

ASC Finding	Rating Criteria	Review Cycle*
Excellent	<ul style="list-style-type: none"> • State meets all Title XI mandates and complies with requirements of ASC Policy Statements • State maintains a strong regulatory Program • Very low risk of Program failure 	2-year
Good	<ul style="list-style-type: none"> • State meets the majority of Title XI mandates and complies with the majority of ASC Policy Statement requirements • Deficiencies are minor in nature • State is adequately addressing deficiencies identified and correcting them in the normal course of business • State maintains an effective regulatory Program • Low risk of Program failure 	2-year
Needs Improvement	<ul style="list-style-type: none"> • State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements • Deficiencies are material but manageable and if not corrected in a timely manner pose a potential risk to the Program • State may have a history of repeated deficiencies but is showing progress toward correcting deficiencies • State regulatory Program needs improvement • Moderate risk of Program failure 	2-year with additional monitoring
Not Satisfactory	<ul style="list-style-type: none"> • State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements • Deficiencies present a significant risk and if not corrected in a timely manner pose a well-defined risk to the Program • State may have a history of repeated deficiencies and requires more supervision to ensure corrective actions are progressing • State regulatory Program has substantial deficiencies • Substantial risk of Program failure 	1-year
Poor ⁴	<ul style="list-style-type: none"> • State does not meet Title XI mandates and does not comply with requirements of ASC Policy Statements • Deficiencies are significant and severe, require immediate attention and if not corrected represent critical flaws in the Program • State may have a history of repeated deficiencies and may show a lack of willingness or ability to correct deficiencies • High risk of Program failure 	Continuous monitoring

*Program history or nature of deficiency may warrant a more accelerated Review Cycle.

⁴ An ASC Finding of "Poor" may result in significant consequences to the State. See Policy Statement 5, *Reciprocity*; see also Policy Statement 8, *Interim Sanctions*.

ASC Compliance Review Report

ASC Finding: Needs Improvement

Final Report Issue Date: February 12, 2014

New York Appraiser Regulatory Program (Program)

New York State Board of Real Estate Appraisal (Board) / Decision Making

PM: J. Tidwell

ASC Compliance Review Date: October 21-25, 2013

Review Period: September 2011 to September 2013

Umbrella Agency: Department of State (Department)

Number of State Credentialed Appraisers on National Registry: 4108

Review Cycle: Two Year

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 York Statutes, Regulations, Policies and Procedures:			X					
States' certification and licensing requirements must meet the minimum requirements set forth in Title XI. (Title XI §§ 1116 (a), (c) and (e), 12 U.S.C. § 3345; ASC Policy Statement 1.)				The State's statute is inconsistent with Title XI. § Section 160-f.2. states "the Department may transmit an annual registry fee of not more than \$25 from such individuals who perform or seek to perform appraisals in federally related transactions to the Appraisal Subcommittee as required by Title XI." The current annual National Registry fee is \$40.	On January 24, 2014, Department staff reported that a statutory amendment will be proposed during the 2014 State Legislative Session. The amendment will provide flexibility by authorizing the Department to transmit the annual registry fee that is set by the Appraisal Subcommittee in accordance with 12 U.S.C. 3338(a)(4)(A). The Department will continue to absorb the additional cost until the amendment is enacted.	None	To strengthen the Program, New York should continue the process of amending their statute to comply with ASC Policy Statement 1.	Upon enactment, please provide ASC staff with a copy of the final law.
Temporary Practice:	X							
				No compliance issues noted.	N/A	None	None	None
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; Title XI § 1109 (a), 12 U.S.C. § 3338; ASC Policy Statement 3.)				Department staff did not report all disciplinary actions to the ASC National Registry.	On January 24, 2014, Department staff reported that the Department has modified its internal policies to ensure that all disciplinary actions are properly reflected on the National Registry. Additional office staff has been trained on reporting procedures. Department staff reviewed the disciplinary actions taken over the past year to ensure that all disciplinary sanctions have been reported. Going forward, the Department will submit revocations, voluntary surrenders and suspensions within 5 business days, and other disciplinary actions within 1 month of occurrence.	None	None	Through off-site monitoring and during the next Review, ASC staff will pay particular attention to this area for compliance with ASC Policy Statement 3.
Application Process:	X							
				No compliance issues noted.	N/A	None	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 that appraiser education courses are consistent with AQB Criteria. (Title XI § 1118 (a), 12 U.S.C. § 3347; AQB Real Property Appraiser Qualification Criteria; ASC Policy Statement 6.)				New York approved education courses with content that appeared to be inconsistent with AQB Criteria for continuing education (CE). These were non-real property-related courses, and professional organization ethics courses.	On January 24, 2014, Department staff reported that they will review all CE courses to ensure that only courses that meet the purpose of CE are approved. The 4 courses identified as being inconsistent with AQB Criteria will not be renewed.	The Board must ensure that all courses approved for appraiser CE conform to AQB Criteria. Within 60 days of the date of this Report, the State must: (1) review its approved course listing of CE to ensure all courses approved meet current AQB Criteria; (2) remove courses or hours that do not meet AQB Criteria from approved status or report them on the list as "expired;" and (3) provide ASC staff a copy of the final approved course listing of CE.	None	Through off-site monitoring and during the next Review, ASC staff will pay particular attention to this area for compliance with ASC Policy Statement 6.
Enforcement:		X						
States must maintain relevant documentation to enable understanding of the facts and determinations in the matter and the reasons for those determinations. (Title XI § 1118 (a), 12 U.S.C. § 3347; ASC Policy Statement 7.)				ASC staff requested 24 complaint files for review. Of those 24 files, 4 could not be located.	On January 24, 2014, Department staff reported that the file storage policy has been revised to ensure that appraiser files are centrally located and separate from enforcement files related to other licensed disciplines. In addition, files will be maintained electronically and reviewed on a monthly basis by a supervising investigator.	None	None	During the next Review, ASC staff will pay particular attention to this area for compliance with ASC Policy Statement 7.
Enforcement continued:		X						
States must resolve all complaints filed against appraisers within one year (12 months) of the complaint filing date, except for special documented circumstances. (Title XI § 1118 (a), 12 U.S.C. § 3347; ASC Policy Statement 7.)				New York had 91 outstanding complaints of which 28 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 28 cases, 13 were in various stages of the disciplinary process, and 15 were still under investigation.	On January 24, 2014, Department staff reported that they are reviewing and streamlining internal processes for complaint investigations for all licensed disciplines, including appraisers. The Department also increased compensation for regional advisors which it believes will enable the Department to recruit additional appraisers to assist in disciplinary matters.	The Department must continue to 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.	None	Through off-site monitoring and during the next Review, ASC staff will pay particular attention to this area for compliance with ASC Policy Statement 7.